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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 369

THE BOARD OF LIQUIDATION OF THE CITY DEBT AND THE DRAINAGE COMMISSION OF NEW ORLEANS, PLAINTIFFS IN ERROR,

versus

THE STATE OF LOUISIANA EX REL. MISS L. B. WILDER ET ALS., DEFENDANTS IN ERROR.

Writ of Error to the Supreme Court of Louisiana.

BRIEF FOR DEFENDANTS IN ERROR, ON MOTION TO DISMISS AND AFFIRM.

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STATEMENT OF THE CASE.

The Constitution of the State of Louisiana, adopted on May 12th, 1898, embraces the following articles:

"Art. 315. The City of New Orleans is hereby authorized and required to examine into and assume payment of the obligations of the Board of Directors of the Public Schools of the Parish of Orleans for unpaid salaries of school teachers and portresses, and of other legitimate claims against said School Board for the years 1882, 1883,

and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886, and 1887, now in the hands of the original owners who have in nowise parted with their rights of ownership, or pledged the same, as may be found by said City to be equitably due by said Board. All claims to be examined into and assumed by the City of New Orleans under this article shall be presented to and filed with the City Council of said City within ninety days after the adoption of this Constitution, and not thereafter.

"Art. 316. The City Council shall issue certificates of indebtedness to the owners of said claims, when examined and found to be equitably due, and all such certificates shall be paid by the Board of Liquidation. If any of the claims aforesaid be rejected by the said City Council, the decisions thereon may be reviewed by any court of competent jurisdiction, and the judgment of the Court thereon shall, if in favor of claimant, be likewise paid by the Board of Liquidation.

"Art. 317. The funds requisite to pay said claims shall be provided by said Board of Liquidation by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans of the issue provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892."

Under the mandatory directions of the articles referred to, the City of New Orleans examined into the accounts of the relators, assumed the indebtedness and issued certificates to evidence its assumption, which were presented to the Board of Liquidation of the City of New Orleans for payment, with a demand on behalf of the relators, that the Board of Liquidation should, in obedience to the directions of Art. 317, sell a sufficient number of the Constitutional Bonds of the City of New Orleans not disposed of (their issue being provided for in Act 110 of the Gen-

eral Assembly of 1890, and the amendment to the Constitution of 1879, submitted to and adopted by the people of the State at the general election in 1892), to realize the sum necessary, and, out of the proceeds thus realized, to pay, as directed by the Constitution, the demands of the relators.

The refusal of the Board of Liquidation to comply with the demand of the relators, provoked an application on the part of the latter for a mandamus to enforce obedience, on the part of the Board, to the constitutional direction indicated in the articles referred to. Resistance to the issuance of a peremptory writ of mandamus was made, on the ground that the Board of Liquidation stood toward the bondholders in the relation of a trustee; that, under Act 110 of 1890 and the Constitutional Amendment of 1892, the bonds authorized to be issued were for the purpose exclusively of retiring the outstanding bonded indebtedness and for evidences of indebtedness which at that time were fundable; that any attempt to divert the bonds authorized to be issued for the limited purposes stated, or to apply them to any purpose other than those expressly provided for, was a violation of the rights of the outstanding bondholders, inasmuch as it impaired the obligations of their contracts, and was in violation of Sec. 10, Art. 1 of the Constitution of the United States, and also of the Fourteenth Amendment of the Constitution; that therefore the said legislation directing the disposition of the bonds for the purposes stated in said constitutional provision, was void for repugnancy to the Constitution of the United States, and was not enforceable against the Board of Liquidation.

In the mandamus proceeding, the Drainage Commission

of the City of New Orleans intervened, asserted its corporate existence and its right to one-half of the surplus derived from the one per cent. tax under Act 110 of 1890, and which is averred was dedicated to the drainage of the City of New Orleans; that upon the faith of this dedication of the one-half of the surplus of the 1 per cent. tax, as provided in Act 110 of 1890, contracts had been made and obligations incurred by said Drainage Commission; and that any attempt to diminish said surplus or to divert it, impaired the rights of said Drainage Commission, and the holders of its bonds and obligations, and was void because of repugnancy to that Article of the Constitution of the United States which prohibits the States from passing any law impairing the obligations of contracts.

To the intervention of the Drainage Commission, relators filed an exception that said Commission was without interest in the controversy, and was without right to participate in the surplus of the 1 per cent. tax provided for in Act 110 of 1890.

Upon the issues thus formulated, evidence was administered and the writ of mandamus, in the court of first instance, made peremptory against the Board of Liquidation, directing its compliance with the constitutional enactment, maintaining the exception of the relators to the intervention of the Drainage Commission and dismissing the intervention for want of interest.

From this judgment, the Board of Liquidation and the Drainage Commission prosecuted an appeal to the Supreme Court of the State of Louisiana, suspending the operation of the judgment until a hearing in that court. After

full hearing in the Supreme Court of Louisiana, the judgment of the lower court, in so far as it directed a peremptory writ of mandamus, was affirmed. The judgment was reversed, in so far as it dismissed the intervention of the Drainage Commission, and the intervention was reinstated by the decree, the Court finding that it had sufficient interest in the pending controversy to intervene for the protection of its rights.

On the decree of the Supreme Court of Louisiana, error was assigned and the record brought here under a writ of error issuing from this Court to the Supreme Court of Louisiana, the assignments of error being substantially those set out in the answer.

Defendants in error, after compliance with paragraph 4 of rule 6, move the Court to dismiss the writ and affirm the judgment.

There is no substantial dispute between plaintiff and defendant in error as to any fact in the case. That with which the Court will have to deal, to which its attention is attracted, and which calls for its decision, are questions of law. Those questions arise upon relators' petition for a writ of mandamus, the Board of Liquidation's return, the intervention of the Drainage Commission, the exception of the relators to that intervention, and the opinion and judgment of the Supreme Court of Louisiana. That part of the record necessary to an intelligent appreciation of the issues and their disposition, has been printed as an appendix to the argument submitted in support of the motion to dismiss and affirm. Walston vs Nevin, Roche vs. Nevin, 128 U. S. 179.

On Motion to Dismiss.

The learned counsel for plaintiffs in error, in discussing the motion, has overlooked the modification of the Judiciary Act of 1789 by the Practice Act of 1867 (see page 18 of brief of plaintiffs in error). As the Practice Act has been construed uniformly by this Court since the case of Murdoch vs. Memphis, 20 Wall., the opinion of the Court to which the writ of error runs is considered in connection with the issues and the decree, and if the decision is not adverse to the right asserted under the Constitution, laws, or treaties of the United States, there is nothing for this Court, on error, to review; and, as a consequence, the appeal is dismissed and the judgment affirmed. A review of the original doctrine and its modification is forcibly stated by Mr. Justice Harlan in Gross vs. United States Mortgage Co., 108 U. S. 484. He said:

"The defendant in error insists that it does not appear from the record that the *decision* of the Supreme Court of Illinois was adverse to any asserted right under the Constitution, laws, or treaties of the United States, nor that the judgment or decree complained of could not have been passed without the determination of any such Federal question. * * * *This proposition depends upon the inquiry, whether the opinion of the State Court, made part of the transcript, can be examined for the purpose of ascertaining the grounds upon which that Court based its final decree.*

"In Gibson vs. Chouteau, 8 Wall. 314; Rector vs. Ashley, 6 Ib. 142, and Williams vs. Norris, 12 Wheat. 117, it was ruled that the *opinion* of the State Court constituted no part of the record, for the purpose of determining whether this Court will re-examine its final judgment or decree. And in Parmelee vs. Lawrence, 11 Wall. 38, where the question arose as to the effect to be given to the certificate of the Chief Justice of the State Court, showing that

a Federal question was raised and decided adversely to the party bringing the case here for review, it was said:

"'If this Court should entertain jurisdiction upon a certificate alone, in the absence of any evidence of the question in the record, then the Supreme Court of the State can give the jurisdiction in every case where the question is made by counsel in argument.'

"To the same effect are Lawler vs. Walker, 14 How. 149, and Railroad vs. Rock, 4 Wall. 177. But in Murdock vs. City of Memphis, 20 Wall. 590, the subject was again under consideration, by reason of the omission from the Act of 1867 of that provision in the 25th Section of the Act of 1879, restricting this Court, when reviewing the final judgment or decree of the highest court of a State, to the consideration of such errors as appeared on the face of the record. It was there said, that in determining whether a Federal question was raised and decided in a State Court:

"'This Court has been inclined to restrict its inquiries too much by this express limitation of the inquiry 'to the face of the record.' 'What was the record of a case,' the Court observed, speaking by Mr. Justice Miller, 'was pretty well understood as a common law phrase at the time that statute was enacted. But the statutes of the States, and new modes of proceeding in those courts, have changed and confused the matter very much since that time. It is in reference to one of the necessities thus brought about that this Court long since determined to consider as part of the record the *opinions* delivered in such cases by the Supreme Court of Louisiana. Grand Gulf R. R. Co. vs. Marshall, 12 How. 165; Cousin vs. Blanc's Executors, 19 Id. 202. And though we have repeatedly decided that the opinions of other State courts cannot be looked into to ascertain what was decided, we see no reason why, since *this restriction is removed*, we should not so far examine those opinions, when properly authenticated, as may be useful in determining that question. We have been in the habit of receiving the certificate of the Court, signed by its Chief Justice or presiding Judge, on that point, though not as conclusive, and these opinions are

quite as satisfactory, and may more properly be treated as part of the record than such certificates.'

"The opinion of the State Court in the present case is properly authenticated. * * *

"We cannot, therefore, doubt that in the existing state of our law, *it is our duty to examine the opinion of the Supreme Court of Illinois*, in connection with other portions of the record, for the purpose of ascertaining whether this writ of error properly raises any question determined by the State Court adversely to a right, title, or immunity under the Constitution or laws of the United States, and specially set up and claimed by the party bringing the writ. Any difficulty existing upon this subject is removed by that provision of the Revised Statutes of Illinois, which requires not only that the Justices of the Supreme Court of the State shall deliver and file written opinions in cases submitted to it, but that 'such opinions shall also be spread at large upon the records of the Court.' This statutory provision would seem to bring the case within the rule which permits an examination of the opinions of the Supreme Court of Louisiana to ascertain whether the case was determined upon any ground necessarily involving a federal question within the reviewing power of this Court."

See Articles 89, 91 and 92 of the Constitution of the State of Louisiana of 1898.

It was said by Mr. Chief Justice Waite, in Crossley vs. New Orleans, 108 U. S., in a case in error to the Supreme Court of Louisiana:

"It was settled long ago that in cases coming to this Court from the Supreme Court of Louisiana, the opinion of the Court below, as set out in the record, may be referred to, if necessary, to determine whether the judgment is one we have authority to review." Roby vs. Colehauer, 146 U. S. 159.

In the recent case of Egan vs. Hart, 165 U. S. 189, on error to the Supreme Court of Louisiana, Mr. Justice White, delivering the opinion of the Court, said:

"It is likewise settled that on error to the Supreme Court of Louisiana, *the opinion of that Court is to be treated as part of the record*, and that it may be examined in order to ascertain the questions presented, and this Court may, for the purpose, not of deciding as to the facts, but by way of throwing light upon the findings, look into the entire record."

If, then, the opinion of the Court is considered as part of the record upon which is to be determined whether the decision of the Court, to whom the writ of error is addressed, is adverse to the right or claim asserted by plaintiff in error under the Constitution, laws, and treaties of the United States; and if, upon examination, it should be ascertained that all of the rights asserted under the Constitution and laws of the United States have been recognized and accorded to the party claiming them, then manifestly there is no error that this Court is called upon to review or correct, and the writ, apparently being prosecuted for delay, should, under the uniform jurisprudence of this Court, be dismissed.

In Eustis vs. Bowles, 150 U. S. 361, Mr. Justice Shiras announced the rule:

"It is settled law, that to give this Court jurisdiction of a writ of error to a State Court, it must appear affirmatively, not only that a Federal question was presented for decision by the State Court, but that its decision was necessary to the determination of the cause, and that it was *actually decided adversely* to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it." See Harrison vs. Morton, 171 U. S. 147.

Now, independent of every other consideration or question that is presented on the face of the record, conspicuous among which is the right of the Board of Liquidation,

simply an arm of the local government, charged with the administration of the financial affairs of the City of New Orleans, and subject at all times to legislative and *a fortiori* constitutional direction; independent of the question of whether the Drainage Commission is asserting a right under legislative grant and in defiance of the constitutional direction which we shall hereafter discuss—it is perfectly manifest, from an inspection of the opinion of the Supreme Court of Louisiana, that that Court considered the rights asserted by the Board of Liquidation, and that every pretension advanced in the interest of the bondholders under the guise of being their trustee, was recognized and enforced by the Court in the opinion which was pronounced and in according to it, in its assumed representative capacity, the protection of the Constitution of the United States which it set up as a defense for its defiance of the Constitution and laws of the State of Louisiana, its sovereign and creator. This is conceded by the learned counsel in his elaborate argument addressed to this Court in answer to the motion now under consideration; and while he discusses generally legal propositions that are not controverted or questioned, he does not and cannot, with the jurisprudence of this Court, settled by a line of decisions from the 20th Wallace to the present time, of its right and duty to consider the opinion and decree of the State Court, dispute the proposition that every right asserted by him is recognized and protected by the opinion of the Supreme Court of Louisiana; and that the bonds which the Board of Liquidation are directed to dispose of in order to discharge the obligations of relators, are, by virtue of that opinion,

subordinated not only to the bonds already issued and outstanding in exchange for those provided for in the Act of 1890, but also the rights of the Drainage Commission to its participation in the surplus of the 1 per cent. tax, after providing a fund sufficient to meet the interest upon the bonds funded under the Act of 1890 and the Constitutional Amendment of 1892.

The opinion in the cause was delivered by the Chief Justice. An elaborate and careful review of the legislation of Louisiana with reference to the fiscal affairs of the City of New Orleans was made; and when the Court reached the defenses of the Board of Liquidation and those urged by the Drainage Commission, it dealt with them generously and maintained every proposition advanced in their respective behalfs. In delivering the opinion, the Chief Justice said:

"Neither the City nor the Drainage Commission could legally object that the extent or scope of the system of permanent improvement would be restrained by the withdrawal of funds needed to make that system complete or successful. The work could have been stopped at any time, though the rights of contract creditors, as they existed at the date of the action of the convention, could not have been by it impaired. Our examination on this branch of the case, as to the effect of enforcing Articles 315, 316 and 317, of the Constitution, will go no further than to see whether contract creditors having rights upon the permanent improvement fund would be impaired or not. Defendants assume that the mere fact that constitutional bonds should be sold for the purpose of paying the certificates held by relators, or should be given in exchange for those certificates, would of necessity entitle the holders of such bonds to prime the holders of permanent improvement bonds,—bonds drawn against the surplus of the 1 per cent. tax—dedicated to permanent public improve-

ments, and also to necessarily come in on a footing of equality with all the other holders of consolidated bonds, and they maintain, if this be true, the rights of contract creditors under the funding act would be impaired.

"Relators, on the other hand, insist that the only portion of the 1 per cent. tax ever set aside for permanent public improvements was one-half of the surplus produced by the tax which would remain after having retained in the hands of the Board of Liquidation enough to meet the payment in full of a $10,000,000 issue of consolidated bonds, and that therefore it would be legally immaterial to creditors basing contracts on such surplus to whom the other portion of the fund would go. It would be enough for them to know it would not go to them, and relators urge that other holders of consolidated bonds would have no ground of complaint; that they should be permitted to share equally with them from the tax fund, as they had accepted their bonds on the expected basis of coming in concurrence with an issue of ten millions of bonds. That they might be interested that the limit as to the amount of the bonds should not be passed, but they were without legal interest, when the limit should not have been passed, as to who should be the holders of the bonds sharing the fund with them. In support of this last position, they rely upon the decision of the Supreme Court of the United States in Board vs. McComb, 92 U. S. 531. If the collection of the 1 per cent. tax would suffice to pay each year the holders of consolidated bonds issued in taking up or retiring the bonds and claims such as were provided for by Act 110 of 1890 and the Constitutional Amendment of 1892, without any conflict with the bonds ordered to be sold by Article 317 of the Constitution of 1898, the former, of course, would have no cause of complaint; but if, from any cause, the amount of the tax collected would be insufficient for that purpose, we do not think the holders of these latter bonds could force the former to prorate with them the amount in hand. This condition of things is not existing. It may never arise, and, should it arise, the Board of Liquidation would doubtless take steps to distinguish

bonds issued under Article 317 from those which had been otherwise issued. It does not necessarily follow that all claims payable out of a particular tax should stand on a footing of perfect equality as to payment. If, from any legally existing cause, there would be priority of right, there would be priority of payment. We have an example of this in the matter of the priority of preference payment of the salaries of the constitutional officers of the State over warrants for ordinary claims, though all are payable out of the general fund (State vs. Burke, 32 La. An. 1213), and it has been held that amounts needed for the alimony of the City have to be paid out before those for other purposes are paid. Moore vs. City of New Orleans, 32 La. An. 729; Saloy vs. City of New Orleans, 33 La. An. 79. So, also, it sometimes happens, from special circumstances, that the holder of one or more of the same series of notes may hold rights subordinated to those of the holders of the others. If there should be, in the future, any actual conflict of interests, the Board of Liquidation and the parties interested will doubtless have taken steps to be able to protect themselves. We do not take the same view that relators do as to what was meant by, and intended to be conveyed by, the surplus referred to by Act 110 of 1890, Act 114 of 1896, and the Constitutional Amendment of 1892. We think that the lawmakers intended that any portion of the 1 per cent. tax provided for in Act No. 110 not needed for the payment or retirement of the particular bonds or claims therein specially provided for as to payment or retirement, should constitute the surplus of the tax, and that it was not contemplated when the laws were passed, or the amendment of 1892 adopted, that, in order to exhaust any portion of the $10,000,000 originally expected to be needed to pay the existing bonds and the existing claims therein specially enumerated, which might not be necessary for that purpose, new classes of claims should or would be thrown under the provisions of the original funding law. We think the surplus was intended to connect at once and follow immediately behind as to its appropriation the amount beyond that actually needed to carry out the plan

as originally mapped out and planned. The surplus was provisionally ascertained each year in a manner particularly specified, to be readjusted the next in a manner also particularly specified. All the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be only any surplus over $10,000,000 which might result from the collection of the 1 per cent. tax. We think the Board of Liquidation, the Drainage Commissioners, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The convention, while ordering the payment of the certificates held by the relators through sales of consolidated bonds, could not confer upon the holders of such bonds rights which in any way would come in competition with the contract rights of creditors existing against the tax at the time of the adoption of the Constitution. Though there was no mention in the Constitution as to the rank of the bonds which would be issued to take up relators' certificates, that rank resulted from legally existing conditions which could not be constitutionally interfered with. There is no constitutional objection to the convention ordering the board of liquidation to sell bonds to take up the relators' certificates, but there would be constitutional objection to be urged if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. Duperier vs. Police Jury, 31 La. An. 710; Shields vs. Pipes, 31 La. An. 765. The consolidated bonds which relators seek to have issued upon their prayer will really be drawn against (when issued) any surplus which will remain of the 1 per cent. tax after the payment of all the bonds issued and to be issued by the board of liquidation, under Act No. 110 of 1890, and the Constitutional Amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated, and

also the bonds issued and to be issued by the drainage commission, under the provisions and authority of Act No. 114 of 1896, to pay the contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent improvement fund by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. The effect of this will be to subordinate the rights of holders of bonds issued by the drainage commission to pay for contracts entered into after the adoption of the Constitution of 1898 to those of the holders of consolidated bonds to be issued under the orders of Article 317 of the Constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control.

"For the reasons assigned, it is hereby ordered, adjudged and decreed, that the judgment of the district court be, and the same is hereby, affirmed, except as to the interest allowed, which interest is hereby reduced from 5 to 4 per cent., costs of appeal to be borne by appellees.

"MONROE, J., takes no part, as he was not a member of the Court when the case was submitted."

"ON APPLICATION FOR REHEARING.
(June 30, 1899.)

"NICHOLLS, C. J. An examination of this cause on the application for rehearing has brought to our notice that, in affirming the judgment of the district court, we affirmed that portion of the same which dismissed the intervention of the Drainage Commission of New Orleans as being without any interest in the cause. A re-examination of the case has brought us to the conviction that our judgment is erroneous in so far as it accorded interest to the relators upon their certificates.

"For the reasons assigned, it is ordered, adjudged and decreed, that our former judgment be amended by setting aside that portion of the same by which interest at 4 per cent. is accorded to the relators, and by which the judgment

of the district court is affirmed in dismissing the intervention of the Drainage Commission. It is now ordered, adjudged and decreed, that the judgment of the district court, in so far as it dismisses the intervention of the Drainage Commission of New Orleans as having no interest in the cause, and in so far as it recognizes the right of the relators to interest upon their certificates, be annulled, avoided and reversed; and it is now ordered, adjudged and decreed, that, recognizing the right of the said Drainage Commission to intervene herein, its intervention be, and it is hereby, reinstated; and it is further ordered and decreed, that that portion of relators' present demand, by which they pray that they may be recognized as entitled and accorded interest upon their certificates, be, and the same is hereby, rejected. And it is further ordered, adjudged and decreed, that the judgment of the district court, except as herein altered and amended, be affirmed and our own judgment, except in so far as herein altered and amended, remain undisturbed. Rehearing refused.

"MONROE, J., takes no part."

Throughout the entire opinion, every right asserted under the Constitution of the United States by the Board of Liquidation or the Drainage Commission, is recognized and enforced, and the bonds that are directed to be sold are subordinated to those already issued and freed from the charge of disturbance or impairment. It is conceded in the argument of the learned counsel for the Board of Liquidation, that such is the force and effect of the opinion of the Supreme Court of Louisiana, against which error is charged. But the complaint is that the decree does not specifically formulate the language quoted in the opinion. It suffices to say that the language of the opinion controls, and whenever the question is presented for determination as to the relative rank of the bonds issued and those to be issued under the article of the Constitution, or they come

into conflict, the determination and adjustment of their relative *status* will be controlled by the opinion and decree in this cause; and that opinion gives to the outstanding bonds the full measure of protection asserted by the Board of Liquidation and the Drainage Commission. Kreeger vs. Shelby Railroad, 125 U. S. 46.

The learned counsel for plaintiffs in error has analyzed with exceptional care and clearness the opinion of the Supreme Court of Louisiana in this case; that analysis, as embodying the Court's findings, being found on page 5 of his brief, and which, for the convenience of this Court, we reproduce. It is a full and complete recognition of every contention advanced both by the Board of Liquidation and the Drainage Commission; and the attack is leveled not against the conclusions reached by the Court in sustaining the points advanced and the protection claimed under the Constitution and laws of the United States, by the Board of Liquidation, and the Drainage Commission, but against the *form* in which the Court's decree is framed—a matter of form and not of substance—and this is not such error as invites, at the hands of this Court, a review.

"The opinion of the Supreme Court of Louisiana, on the appeal of the defendant Board, was to the following effect:

"First. That the Board had the right to set up the unconstitutionality of Art. 317 of the Constitution of 1898, on the authority of the Board of School Directors vs. New Orleans, 42 An. 96.

"Second. That the operation of Art. 317 is restrained by the Constitution of the United States.

"Third. That the Constitutional Convention had the right to determine for itself, free from legislative and constitutional control, the extent to which permanent improve-

ments should be made within the limits of the City of New Orleans, and the amount to be expended for that purpose.

"Fourth. That the surplus referred to in the Acts of 1890 and 1896 and the Constitutional Amendment of 1892, was not, as contended by relators, the surplus which would remain after provision had been made for an issue of $10,000,000 of constitutional bonds, as provided by the amendment, but that it was the residue of any portion of the tax provided for by Act 110 of 1890, and the amendment, which was not needed for the payment and retirement of the particular bonds actually issued, and the claims specially therein provided for.

"That the Board of Liquidation and the Drainage Commission, and those with whom they had contracted, were justified in placing that interpretation upon the legislation and contract rights based upon the same.

"Fifth. That the Convention, while ordering the payment of the certificates held by relators, through sales of constitutional bonds, could not confer upon the holders of these rights bonds which would in any way come in competition with the contract rights of creditors existing against the tax at the time of the adoption of the Constitution; that though there was no mention in the Constitution as to the rank of the bonds that would be issued to take up relators' obligations, that rank resulted from legal condition, which could not be constitutionally interfered with; that while there was no constitutional objection to the Convention ordering the Board of Liquidation to sell bonds to take up relators' certificates, there would be constitutional objection if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act 110 of 1890, Act 114 of 1896, and the Constitutional Amendment of 1892.

"Sixth. That the constitutional bonds which relators seek to have issued, would really be drawn against any surplus which would remain of the 1 per cent. tax after the payment of all bonds issued and to be issued by the

Board of Liquidation under Act 110 of 1890, and the Constitutional Amendment of 1892, in order to fund, retire, and pay the bonds and debts therein specifically enumerated; and also bonds issued and to be issued by the Drainage Commission, under the provisions and authority of Act 114 of 1896, to pay contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the Permanent Public Improvement Fund by Act 110 of 1890, and Act 114 of 1896, and the Constitutional Amendment of 1892.

"Seventh. That the effect of this would be to subordinate to the rights of holders of bonds issued by the Drainage Commission to pay for contracts entered into after the adoption of the Constitution of 1898, to those of the holders of the constitutional bonds issued under Article 317.

"It would thus appear from the opinion, that every ground assigned by defendant as a reason for its non-compliance with Article 317, has been maintained by the State Supreme Court, and its refusal to obey the command of Article 317, and every defense that it raised to the suit of relators, which was not to obtain the relief which is outlined in the opinion, but to enforce the rights which are in terms undertaken to be conferred by Article 317, differing *in toto* from what the State Supreme Court in its *opinion* intended to award, is affirmed to be correct and well founded in law."

Independent of the considerations addressed to the Court in support of the motion to dismiss, and those which we shall hereafter advance on the motion to affirm, we respectfully submit that the Board of Liquidation of New Orleans is without legal right or authority to prosecute this writ of error or to be heard in its support, and that the Drainage Commission is without interest in the controversy, and its writs should be dismissed. We shall discuss briefly, under separate heads, the propositions announced.

A.

The Board of Liquidation of the City of New Orleans is without right or authority to prosecute this writ of error, or to be heard in its support.

Since the creation of that Board, it has arrogated to itself a measure of authority and power, independent of the State of Louisiana, its creator, which is justified neither by the law which called it into existence, nor by the conference of legislative authority since its creation.

In 1879 the Constitution directed that the General Assembly should enact legislation proper to liquidate the indebtedness of the City of New Orleans, and apply its assets to the satisfaction thereof. Art. 254, Constitution of 1879. Acting under this constitutional mandate, the Board of Liquidation was created by Act 133 of 1880, its powers extended and its administration enlarged with reference to the class of debts that were to be liquidated, under Act —— of 1882 and —— of 1884. It received, under Act 110 of 1890, and the amendment of 1892, constitutional recognition, with powers defined and limited. It was nothing more, under the legislation to which we have referred, than an arm of the City government, its members trusted clerks of the City, charged with the application of the City's property and its assets, with such taxes as it was entrusted with, to the payment of the City's floating and bonded indebtedness. It was at all times subject to constitutional or legislative direction, with the right reserved to those whose interests were affected, to prevent any encroachment upon their rights by legislation, constitutional or otherwise, which in its effect and operation would impair the obligation of existing contracts. These

are the views substantially expressed by this Court as to the relations between the Board and the City, in the case of Board of Liquidation vs. Louisville & Nashville Ry., 109 U. S. 228. In the case referred to, this Court, speaking through the Chief Justice, said:

"It must be borne in mind that all the legislation involved relates to the distribution of the powers of the City government among the different departments. As the question is presented to us, no contract rights need protection. Whether the Board of Liquidation is a corporation that can sue in its own name, or that can be sued, is not at all important, for even if it be a corporation, it is in effect nothing more than one of the departments of the City government, charged with the duty of controlling and directing matters relating to the bonded debt. Even though the effect of Section 5 of the Act of 1880 was to pledge the property of the City not dedicated to public use to secure the payment of the public debt, there was nothing to prevent the Legislature from revoking the pledge until contract rights had in some way intervened. It is agreed that no new bonds were ever issued by the Board under the authority or upon the faith of the Act of 1880 before the new charter was granted, and Act No. 81 of 1882 was passed before anything was done in the way of extending or renewing bonds under Act No. 58 of the same year. The result of the whole legislation is, therefore, that, in 1880, the Board of Liquidation was created and given power to dispose of and sell the property of the City not dedicated to public uses, and out of the proceeds pay the public debt; but before any new rights had accrued under this power, the control and disposition of batture property not needed for public uses was withdrawn from the Board and given to the City Council, and the proceeds of the sales and leases of public privileges and franchises were appropriated to the payment of the expenses of public improvements which were permanent in their character.

"Whether the money realized from this compromise is to be applied to the payment of the public debt or to make

permanent improvements, we do not undertake to decide, but that the compromise itself was within the departmental authority of the City Council, and not subject to the control of the Board of Liquidation, is to our minds clear."

These expressions of this Court fix definitely and decisively the relation of the Board of Liquidation to the municipality of New Orleans. It is not an independent organization, in the sense in which it assumes to stand before the Courts, but, in the language of the Chief Justice, "It is nothing more than one of the departments of the City government, charged with the duty of controlling and directing matters relating to the bonded debt."

And it is an assumption upon its part for which there is absolutely no justification either in the Constitution or laws of the State, that it stands in the character of *trustee* toward the bonds issued; and that it, representing the debtor, is the trustee of every dollar of outstanding obligations of the City, and is free from the legislative or constitutional control of its creator. It is a trustee in the same sense that every debtor is charged with the preservation of his property for the use and behoof of his creditors, holding it subject to that legal and moral pledge with which a debtor's property is at all times impressed until the payment of his obligations. The people of Louisiana could at any time dismember the Board of Liquidation, provided that in so doing the tax dedicated to the payment of the bonds is preserved intact, and there is no impairment of any obligations that the City assumed, and under which it rests as long as the obligations stand undischarged. The City of New Orleans could not defy, by open repudiation,

the mandate of the people expressed in their Constitution, and no department of the City government is invested with that power or authority, except in so far as the attempt is made to violate a higher law, the Constitution and laws of the United States. The bondholders and the contract creditors of New Orleans or of the Drainage Commission, are not here questioning or contesting the validity of this constitutional direction. Their rights have been abundantly protected by the opinion of the State Court, and they cannot be affected or concluded by anything that takes place in this proceeding; and it does not lie with an arm of the City government, the Board of Liquidation, to be heard assailing the Constitution and laws of its creator. A corporation charged with a public duty, as the servant of the people, ought not to be heard attacking the fundamental law of the State under which it exercises its corporate rights, unless it clearly and manifestly impairs its contract obligations. Cooley's Constitutional Limitations, 196; and People vs. Railway, 15. Wend. 113.

B.

The Drainage Commission of New Orleans, intervening and prosecuting the writ of error herein, is without interest in this controversy, and its writ should be dismissed.

The intervention of the Drainage Commission, asserting contract rights in the surplus of the 1 per cent. tax, invites consideration as to its interest in this controversy, and its right to assert vicariously the unconstitutionality of the articles of the Constitution of the State of Louisiana, which direct the Board of Liquidation to sell, of the undisposed of City bonds issued under Act 110 of 1890, an amount

sufficient to discharge the obligations assumed by the City and due the relators in this case. What interest has the Drainage Commission in the 1 per cent. tax levied under Act 110 of 1890, and the Constitutional Amendment of 1892, and in what manner are its rights affected, and its contract obligations, if any, impaired or diminished? If the Drainage Commission is without interest in the fund arising from the 1 per cent. tax, or the surplus arising therefrom, it indisputably has no right to intervene in this proceeding and assert the unconstitutionality of a law which in no manner affects or disturbs it; and therefore without interest in defeating the constitutional direction, and without right to prosecute and to be heard in support of its writ of error.

We submit that the Drainage Commission is without interest in this controversy, Act 110 of 1890 is, by virtue of the Constitutional Amendment of 1892, a part of said amendment, and is to be considered as if the whole act, in its substantial parts, was embodied in the amendment. The dedication of one-half of the surplus of the 1 per cent. tax to works of public improvement is, therefore, by virtue of Act 110, a constitutional mandate. See Sec. 8, Act 110. The right to appropriate the surplus to works of public improvement, and the character of the work, are by constitutional direction confided to the City Council with supervisory power in another branch of the city government, to-wit., the Board of Liquidation. No part of the surplus arising from the 1 per cent. tax can be paid out, even for works of permanent public improvement, unless ordinanced for by the Council of the City of New Orleans, and approved by the Board of Liquidation. See

Sec. 10 of Act 110. The limit thus placed by constitutional direction upon the disbursement of the surplus of the 1 per cent. tax, is in furtherance of the constitutional mandate which guarantees to the people of the City of New Orleans the selection of their own officers to administer their affairs, and who were entrusted by the people of this municipality with the disposition of the taxes which they contribute to the support and maintenance of the municipal government. See Art. 253, Constitution of Louisiana of 1879.

The City Council has not dedicated any part of the surplus of the 1 per cent. tax provided for by Act 110 of 1890 to the work of drainage. There was an ordinance passed in 1892, dedicating the surplus to works of drainage, but that ordinance was subsequently repealed. (See Record). And this before the organization of the Drainage Commission, intervening herein, and before any contracts were entered into which looked to the fund for their payment. Ordinance 10,091, C. S., referred to in the act creating the Drainage Commission (see Sec. 4, Act 114 of 1896) is simply an ordinance approving a *plan* of drainage to be put into execution, without the appropriation or dedication of any part of the surplus of the 1 per cent. tax to the payment of said work; and this is emphasized by the provision in the ordinance making appropriations out of the surplus of the 1 per cent. tax, limited to the expense of making a topographical survey of the City of New Orleans for the purpose of a *plan* of drainage. Flynn's Digest of New Orleans Ordinances, p. 268. The *plan* thus formulated by the Council, under the ordinance referred to, is by the Legislature only adopted as far as prac-

ticable, with the right in the Drainage Commission to modify the same "as in its judgment circumstances may require." The ordinance of the Council does not dedicate to the work of drainage the surplus tax arising under Act 110 of 1890, but only provides for the expense necessary to prepare detailed plans and specifications for the execution of the work of drainage. Up to this time, there has been no appropriation or dedication of any part of the surplus tax arising under Act 110 of 1890, subjected by constitutional direction to the control of the City Council, nor has there been any appropriation or dedication by the City Council of the tax to any works of public improvement, and none to the Drainage Commission.

Act 114 of 1896, creating the Drainage Commission, being ordinary legislation, cannot disturb, affect, or control the constitutional direction embodied in Act 110 of 1890, and cannot in its operation withdraw from the administration of the City's officials who, by constitutional direction, are charged with the duty of applying the surplus tax under the act, to such works of public improvement as in their judgment will best subserve the public's interest. In order to withdraw from the operation and control of the Common Council of the City of New Orleans, the right, in the exercise of its best judgment, to appropriate the surplus of the 1 per cent. tax to works generally of permanent public improvement, and restrict its operation and dedication to the work of drainage, it requires legislation *of equal dignity* with the grant conferring the power. The legislation of 1896, with reference to the Drainage Commission, is not of the same character or the same dignity as the constitutional direction. Therefore, in

so far as there is any conflict between the two, the legislation of 1896 must yield, and the power vested in the Council exercised independently of the legislative direction and by virtue of the constitutional mandate. The doctrine announced is recognized and enforced by the Supreme Court of Louisiana in Fisher vs. School Directors, 48 La. An. 1079. Under Act 136 of 1894, the Legislature undertook to direct the disposition of one-half of the surplus of the 1 per cent. tax, dedicated by Act 110 of 1890, to the public schools. The Court held that this could not be done by ordinary legislation, the dedication of the one-half of the surplus of the 1 per cent. tax being by constitutional direction. Applying the principle thus announced, the result is that the Drainage Commission, as presently organized, with no other authority for its right to one-half the surplus of the 1 per cent. tax than the Act of 1896, is without interest in this controversy, and through its vicarious intervention it cannot be heard to raise the question of the constitutionality of an article of the Constitution of Louisiana, charged to be in conflict with the Constitution of the United States, and therefore cannot be heard in the prosecution of its writ of error, the Commission being without interest.

The contention that the decision of the Supreme Court of Louisiana in the case of the State vs. Flower, 49 La. An., affirms the constitutionality of the legislation creating the Drainage Commission, is without warrant either upon the consideration of the issues presented to the Court, or the decision rendered in the case. The only question submitted in that case was as to the corporate existence of the Drainage Commission, and the Court recognized its cor-

porate existence as a State functionary and not a part of the municipal government of New Orleans. The Act names the officers who are to constitute the Board, and this independent of the will of the citizens of New Orleans and the taxpayers thereof. The only justification for the recognition of the corporate existence of the Drainage Commission, under the Constitution of 1879, according to the citizens of New Orleans the selection of their own officers, was that the Commission was a State organization with duties and powers extending beyond the corporate limits of the City. No other question was discussed in that case, and that was all the Court decided. This emphasizes our contention that it is not competent for the Legislature to withdraw from the administration of the City Council, under Act 110 of 1890, Sec. 10, the right to disburse the taxes collected, and invest a State organization with their appropriation and disbursement.

It will not do to say that the constitutional direction is carried out in dedicating the surplus to works of public improvement through the intervention of an agent designated by the Legislature. The Constitution invests the power in the City Council to primarily designate to what works of public improvement this surplus shall be applied. They are not limited in the selection of the works, except that they are to be works of permanent public improvement; and this delegation of power by the Constitution to the Council is based upon the theory of its representative character, and is in harmony with that provision of the Constitution of 1879, which guarantees to the citizens of New Orleans the right of appointing its several public officers necessary for the administration of the City's affairs.

It was not competent for the Legislature of Louisiana to withdraw from the representative of the taxpayers of the City of New Orleans, the Common Council, the power invested by constitutional mandate, of dedicating the surplus fund to works of public improvement which in its opinion would best subserve the public interest, and investing it in a creature of the Legislature, independent of the representative of the citizens and taxpayers of the municipality.

II.

But if the legislation of 1896, creating the Drainage Commission, is valid, and if it should be held that its effect is to control the constitutional direction, and if the Drainage Commission, under the legislation, has a right to the surplus of the 1 per cent. tax for works of drainage, to the exclusion of all other works of public improvement, then we submit that the Drainage Commission is without interest in this controversy, because it was only to receive one-half of the surplus derived from the law, after the payment of fixed charges. And what constitutes the surplus is defined by the act itself. Section 8 provides that out of the proceeds of the 1 per cent. tax the Board shall annually provide, first, for the carrying out of the Premium Bond scheme; second, the payment of the interest upon the bonds hereby *authorized* to be issued (under Sec. 1 of the act, not only the authorization, but the direction, is to issue bonds to the amount of ten millions of dollars); third, the interest upon all other outstanding interest-bearing bonds; fourth, after the year 1925, for the annual sinking fund necessary to recall and retire the bonds issued under this act; fifth, the deduction from the tax of the expenses in-

curred by the Board; sixth, the paying of any deficiency in the interest fund for any previous years. After all of these items have been provided for out of the 1 per cent. tax, the act provides that one-half of the surplus of said tax should be passed to the credit of a special fund known as the "Permanent Public Improvement Fund," to be disposed of as provided for in said act. See Sec. 8, Act 110 of 1890. It was contemplated that the entire ten millons of bonds should be issued, and whether issued at one time or at different times, is immaterial, because the interest upon the *authorized* issue is first to be deducted, with the other charges to which the fund is subjected, before there could be any surplus. Therefore, as long as the fund is not subjected to any other charges than those expressly provided for by the act, the Drainage Commission is without interest to complain. Works of public improvement were not to receive one-half of the 1 per cent. tax, after simply providing for interest upon the bonds actually issued. The fund realized from the collection of the tax was to be charged with interest upon the bonds *authorized* to be issued, and the amount of that authorization, by direction of the statute, was ten millions of dollars. The fund was burdened with additional charges, and the surplus contemplated and the surplus provided for, was after all the charges on the fund had been discharged, and the balance was to be divided equally between the City of New Orleans for works of public improvement and the Public Schools. Therefore, until there is an attempt made *to disturb the surplus thus created*, either by a misapplication of the funds collected, or by subjecting the tax to additional burdens and charges not provided for in the Act, the intervenor is

without interest to contest the right of the people of the State of Louisiana to issue bonds for the payment of its just debts, within the limits of the ten millions authorized by the Constitutional Amendment of 1892.

The contractor with the Drainage Commission is not here complaining. The holders of the drainage bonds are not here complaining or asserting any rights upon the fund or against the sale of bonds necessary to retire and pay the debts which, by constitutional direction, were assumed by the City of New Orleans. It is the Drainage Commission, a State functionary, championing the rights of parties who do not see fit or proper to assert their own rights, or assert that they are injured in consequence of the constitutional direction.

The Drainage Commission, *qua* Commission, has no right to question or oppose the will of the sovereign; and it is without authority to champion the rights of the bondholder or contractor. It was competent for the people of this State, in convention, by constitutional direction to have diverted to any other purpose the surplus of the 1 per cent. tax; this, of course, without prejudice to the rights of the bondholders or contractors. Assume that there were no contracts extant, and no bonds issued by the Drainage Commission, could the right of the people of this State be successfully questioned as to the disposition to be made of the surplus tax? Suppose the people of this State had laid a prohibition upon works of public improvement, and had directed the public schools to be closed, and that education should not be at the public expense; could any one dispute the proposition that the surplus of the 1 per cent. tax could be ap-

propriated to other purposes than works of public improvement or public education? Would the Drainage Commission, as thus organized, have the right to attack as unconstitutional a change in the destination of the surplus of the 1 per cent. tax, and would the Court, under such an attack, continue to build up and augment a fund extracted from the pockets of the taxpayers, without any resulting benefit to them?

We submit that in either aspect the Drainage Commission is without interest to complain of the action of the people of this State, speaking through their representatives in convention assembled, in directing the City of New Orleans to discharge a debt for which it was morally if not legally responsible, and to provide for its payment out of the bonds unissued, but within the limit of the act authorizing their issue, and which in no manner disturbs, affects, or impairs the rights of bondholders or those asserting claims against the surplus arising from the 1 per cent. tax under the Act of 1890, and the Constitutional Amendment of 1892.

III.

But, independent of the two propositions we have argued, and either of which, we respectfully submit, is decisive of the pretensions of the Drainage Commission, it suffices to say that its contention received at the hands of the Supreme Court of Louisiana the full measure of recognition which it claimed. And in the course of the opinion delivered by the Chief Justice, he said:

"The consolidated bonds which relators seek to have issued upon their prayer, will really be drawn against (when issued) any surplus which will remain of the 1 per

cent. tax after the payment of all bonds issued and to be issued by the Board of Liquidation under Act 110 of 1890 and the constitutional amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated; and also the bonds issued and to be issued by the Drainage Commission under the provisions and authority of Act 114 of 1896, to pay the contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent public improvement fund, by Act 110 of 1890, Act 114 of 1896, and the constitutional amendment of 1892. The effect of this will be to subordinate the rights of the holders of bonds issued by the Drainage Commission to pay for contracts entered into after the adoption of the Constitution of 1898, to those of the holders of consolidated bonds to be issued under the orders of Article 317 of the Constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control."

If there were any bonds extant at the time of the adoption of the Constitution of 1898, or if the Drainage Commission was under obligations resulting from contracts made prior to that time, its bonds and obligations are protected by the decree in this cause, being superior in rank and freed from any impairment in consequence of the issue of additional bonds under the Act 110 of 1890, to discharge the indebtedness provided for in Articles 315, 316, and 317 of the Constitution. That being true, the full measure of protection under the laws and Constitution of the United States, asserted by the Commission, is recognized, and its rights, whatever they may be, as they existed on May 12th, 1898, are undisturbed and unimpaired; and therefore there is no error upon the record of which it can complain and seek to review at the hands of this Court.

ON MOTION TO AFFIRM.

Accompanying the motion to dismiss is one to affirm the judgment on the ground that the decision of the Supreme Court of Louisiana recognized and enforced the rights asserted by plaintiffs in error, and accorded to them the full measure of protection guaranteed by the Constitution and laws of the United States. Independent of the question of the right of the Board of Liquidation to assert the unconstitutionality of Art. 317 of the Constitution of Louisiana of 1898, and independent of the right of the Drainage Commission, who, without interest, has brought here, under its writ, for review, the judgment of the Supreme Court of the State, we respectfully submit that the legislation with reference to the disposition of the undisposed of bonds to discharge the obligation fixed upon the City of New Orleans, by virtue of Articles 315, 316 and 317 of the Constitution of 1898, is valid legislation, free from the charge that it affects or impairs, in any manner, or in the slightest degree, the obligation of the contracts evidenced by the bonds of the City of New Orleans issued under Act 110 of 1890, and the Constitutional Amendment of 1892. That the Supreme Court of the State went to the greatest possible length in subordinating the bonds directed to be sold by the Board of Liquidation to discharge the indebtedness that the City of New Orleans had assumed under the provisions of Article 315, and accorded the then outstanding bonds a higher rank and a greater decree of security than they were entitled to under the law authorizing their issue, and the Constitutional Amendment in confirmation thereof. This was all that the Board of Liquidation or the Drainage Commission asked, and more than they were legitimately

entitled to; and being accorded the full measure of protection which they sought, the judgment, acquiesced in by relators, should be affirmed. For the convenience of the Court, we have printed in full, and annexed to the brief, Act 110 of 1890, and the Constitutional Amendment of 1892.

Section 1 of Act No. 110 of 1890 is as follows:

"That in order to provide for the retirement of the outstanding bond indebtedness of the City of New Orleans, and such other indebtedness as under existing laws is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as Premium Bonds, the City of New Orleans is authorized, empowered and directed to issue bonds to the amount of ten millions of dollars; ..... to be known as the 'Constitutional Bonds of the City of New Orleans.'

"Said bonds shall be numbered ..... and shall be signed by the Mayor and Comptroller of the City of New Orleans, and delivered to the Board of Liquidation of the city debt, to be used for the purposes aforesaid in accordance with the provisions of this Act."

Under the the terms of said section, Constitutional Bonds to the full amount of ten millions of dollars were delivered by the Mayor and Comptroller to the Board of Liquidation.

At the time that the late Constitutional Convention assembled, the Board had sold, or otherwise disposed of, not quite nine million of dollars of said bonds. There remained unsold, undisposed of, more than one million dollars of said bonds. It is admitted that there is, to-day, something over a million of dollars of said bonds in the hands of the Board of Liquidation.

The Convention could see no good reason why the mil-

lion which has remained unemployed should not be used by the City for the payment of other legitimate obligations.

The claims of the School Teachers and Portresses of the Public Schools of this City for their unpaid salaries for the years 1882, 1883, 1884, 1885, 1886 and 1887, had never been satisfied. Upon every consideration of justice, those debts, technically due by the Board of School Directors for the Parish of Orleans, were morally due by the City of New Orleans; for the failure of the Board of School Directors to discharge its obligations under the law and to pay the full salaries of the Teachers and Portresses for the years stated, was attributable solely to the lack of the necessary funds, and *the City* was responsible for the *insufficiency of the appropriations* needed to carry on *its schools*.

The Convention therefore authorized the City of New Orleans to examine into said claims, and to assume the payment thereof, if it should find them to be equitably due. And it was ordained that if the City Council should approve said claims, and issue the City's certificates of indebtedness therefor, the Board of Liquidation should pay them. And in order to provide the requisite funds the board was authorized and commanded to sell a sufficient number of the Constitutional Bonds still in the Board's hands; or, in other words, to pay out of the million dollars' worth of bonds which has remained unemployed.

But the Board of Liquidation asserts under Section 1 of Act No. 110 of 1890, that the Constitutional Bonds can be used only for the purpose of retiring the bonded debt which was outstanding, and such other indebtedness as was entitled to be funded, at the time that the Constitutional Bonds were issued.

That is the question raised by the Board, without authority or interest, as it appears to us.

In what manner the obligation of any contract will be impaired by the use of the City's money to pay a certain debt rather than some other debt, is not very obvious.

No one will deny that, originally, Act No. 110 of 1890 might have validly provided for the payment of other debts than those specially mentioned in said act. Historically, it is a fact that it was expected that the entire issue of $10,000,000 would be absorbed by the particular debts specified in the act. Now, however, that the act has been in operation six years, it is found that it did not require more than nine millions of dollars to fund those particular debts. How can it work any injury to the holders of Constitutional Bonds, how can it affect them at all; nay, how can it concern or interest them, that the remaining million which was originally intended and expected to be used for the payment of certain debts of the City of New Orleans should be employed, under the same constitutional sanction, to pay other legitimate obligations of the City?

It is perfectly evident that every holder of Constitutional Bonds became a holder in a $10,000,000 issue. This was *the contract:* That there should be not more than $10,000,000 of bonds issued; that the bonds should be payable fifty years after their date, or sooner; that they should bear interest at the rate of 4 per cent. per annum, payable semi-annually; that they should be exempt from taxation; that the security for the payment of the interest and principal of said bonds would be the special *ad valorem* tax of 1 per cent. to be levied annually, during the existence of the

bonds, upon all the taxable property, real, personal and mixed, in the City of New Orleans.

Those were the *material* terms of the act, which could not have been modified. The act provides:

"All of the *substantial* provisions of this act are hereby declared to be a contract between the State of Louisiana, the City of New Orleans, the Taxpayers of said City and each and every holder of said Constitutional Bonds." (Section 16).

Is it material, is it of any consequence at all, that the proceeds of the bonds should be employed in paying certain debts of the City, instead of other debts?

This Court has dealt with an exactly similar question, in the case of the Board of Liquidation et al. vs. McComb, reported in 92 U. S., page 531.

That case is thus stated by the Court itself, at pages 532 to 535:

"It appears that, by an act of the Legislature of Louisiana, passed the 24th of January, 1874, called the Funding Act, the Governor of the State, and other State officers, were created a Board of Liquidation, with power to issue bonds of the State to an amount not to exceed $15,000,000, or so much thereof as might be necessary for the purpose of consolidating and reducing the floating and bonded debt of the State, and to be called 'consolidated bonds of the State of Louisiana;' which bonds were to bear date the 1st of January, 1874, and to be payable in the year 1914, with interest at seven per cent. per annum. The act provided that these bonds should be exchanged by the board for valid outstanding bonds of the State and valid warrants of the auditor issued prior to the passage of the act (except warrants issued in payment of constitutional officers of the State), at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants; AND

THAT THEY SHOULD BE USED FOR NO OTHER PURPOSE. An annual tax of five and a half mills on the dollar of the assessed value of all the property of the State was levied, and directed to be collected, to pay the interest on these bonds, and to purchase and retire them. Other provisions were added, making it penal for the officers to divert the funds thus provided, or to obstruct the execution of the act, or to fail in the performance of any of the official duties required by it; and it was declared that no court or judge should have power to enjoin the payment of the bonds or the collection of the tax provided therefor. The eleventh section further declared, that each provision of the act should be a contract between the State and each and every holder of the bonds issued under the act; and section thirteen provided that the entire State debt, prior to the year 1914, should never be increased beyond the sum of $15,000,000, authorized by the act; it being declared to be the intent and object thereof, and of the exchanges to be effected under it, to reduce and restrict the whole indebtedness of the State to a sum not exceeding $15,000,000, and to agree with the holders of the consolidated bonds that said indebtedness should not be increased beyond that sum during said period. On the day of passing this act, the general assembly passed another act, proposing to the people of the State an amendment to the Constitution of the State, which was adopted at the ensuing election; and provided that the issue of the consolidated bonds authorized by the funding act should create a valid contract between the State and each holder thereof, which the State should not impair; prohibited the issue of any injunction against the payment of the bonds or levy of the tax; directed that the latter should be levied and collected without further legislation; and declared that whenever the debt of the State should be reduced below $25,000,000, the constitutional limit should remain at the lowest point reached, until it was reduced to $15,000,000, beyond which it should not be increased.

"The language of this clause is explained by the fact

that, in 1870, a constitutional provision had been adopted limiting the State debt to $25,000,000; and the further fact, stated in the bill, that in 1874, when the funding act was passed, the outstanding bonds and valid warrants fundable under the act equalled this amount; so that, at sixty cents on the dollar, the debt to be funded would require the issue of the whole $15,000,000 of consolidated bonds. Besides these classes of debts, others to a considerable amount were then outstanding, as will appear further on.

"The board of liquidation created by the funding act entered upon the performance of their duties, and, up to the commencement of proceedings in this case, they had issued a little over $2,000,000 under the act.

"On the 2d of March, 1875, the general assembly passed an act authorizing the board to issue a portion of the above mentioned consolidated bonds to the Louisiana Levee Company, in liquidation of a debt claimed to be due it under a contract made with the State in 1871, by which that Company was to reconstruct and keep in repair the levees on the Mississippi River and its branches and outlets. The Act of 1871, in and by which this contract was made, had provided and set apart certain taxes to be levied and collected throughout the State, to meet the payments which would accrue to the Company. But it seems that these taxes had failed to reach their destination, as a committee, appointed by the Act of 1875 to investigate the subject, reported that there was $1,700,000 still due the Company, which had accrued prior to October, 1873, and which the act authorized the board of liquidation to pay in the said consolidated bonds. *This debt was not one of the debts to fund which the consolidated bonds had been created.* It was not represented by outstanding bonds of the State, nor by valid warrants of the State auditor; *and the complainant in this case, in his bill, insists that it is not a debt of the State at all, being provided for by the special taxes appropriated for its payment. Another objection made to the proposal to fund it is, that it is to be paid in full, whilst the funding act authorized the payment of only sixty cents on the dollar of the debts to be*

replaced by the issue of the consolidated bonds,—the great object of the act being to effect a reduction of the State debt within manageable limits. *It is insisted that the Act of 1875, authorizing the appropriation of consolidated bonds to the payment of the levee debt, defeats this scheme, and impairs the validity of the contract made with those who have accepted the bonds according to the terms of the funding act, and is, therefore, void.* The plaintiff, being a holder of these bonds, filed his bill for an injunction to prevent the consummation of the wrong which he alleges will be committed by carrying out the Act of 1875."

The Supreme Court, after passing upon another point, said (at page 537):

"The question, however, remains, whether, even supposing the levee debt to be a valid one, it can be lawfully funded in the consolidated bonds, in view of the other stipulations of the funding act.

"The principal stipulations of this act, aside from that respecting the increase of the State debt, are: *First*, that the consolidated bonds shall not exceed in amount $15,000,000, or so much thereof as may be necessary,—that is, necessary for the purpose of consolidating and reducing the floating and bonded debt of the State at sixty cents on the dollar; *secondly*, that they shall only be used for exchange for said floating and bonded debt, as designated in the act, *which does not embrace the levee debt in question;* and that such exchange shall be at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants; *thirdly*, that a tax of five and a half mills on the dollar of the assessed value of all the real and personal property of the State shall be annually levied and collected for paying the interest and principal of the bonds, and is set apart and appropriated for that purpose, and no other, *any surplus beyond paying interest to be used for the purchase and retirement of the bonds; fourthly*, that the power of the judiciary, by means of *mandamus*, injunction and criminal procedure, shall be exerted to carry out the provisions of the act.

"The precise manner in which these stipulations will be violated by the proposed funding of $1,700,000 of the levee debt at par, as insisted by the plaintiff, is this: *First*, that the entire issue of the bonds will be increased by that amount, thereby diminishing the relative security provided for each bond. *Secondly*, that the levee company will receive full amount of its debt, whilst the complainant, and others in like case with him, have accepted sixty cents on the dollar for their old bonds, on the faith that no one should receive any more. *Thirdly*, that the benefits of the scheme propounded by the funding act will be lost by such a violation of it, and all the advantages anticipated by the complainant and others in surrendering their original debts will fail.

"In answer to the first of these supposed violations,—namely, that the issue of consolidated bonds will be increased by the amount of the levee debt,—it may be said, that the amount of the consolidated bonds is expressly limited to $15,000,000; *and there is no pretense that the board of liquidation intend to issue more.* The proposed appropriation might have the effect of excluding from the benefit of the funding act some of the outstanding obligations of the State originally intended to be embraced within its provisions. But it will not increase the total amount of the consolidated bonds. The complainant can hardly contend that he has a right to prevent the State from using the bonds for funding its other debts, if those for which they were intended should not be surrendered. It is a question of power. The funding act gives the board of liquidation power to issue $15,000,000 of these bonds, or so much thereof as may be necessary to fund the outstanding floating and bonded debt; and it is admitted that the amount of that debt is sufficient to absorb the whole $15,000,000. He cannot say, 'I am entitled to the chances of some of the designated creditors not coming in.' He cannot be injured, so far as this objection goes, if the amount of bonds ultimately issued does not exceed the limit of $15,000,000. It may very well

be that some of the creditors whose debts were intended to be funded will refuse to come in and accept the terms of the funding act. If that should be so, it might greatly embarrass the financial affairs of the State to have to appropriate the entire tax of five and a half mills to a mere fraction of the debt it was intended to provide for, which was $15,000,000. To tie the hands of the State under such circumstances would be to give the complainant the advantage of a technicality, to the great injury of the State. It would be adhering to form rather than to substance. The complainant consented, when he took his bonds, that there might be $15,000,000 of them issued. He cannot justly complain if that amount is not exceeded, even though the debts funded thereby are not precisely those specified in the act, provided the material terms of the act are complied with. In any case, those that are not funded must be provided for in some other way; and, unless some special reason exists why one debt should be funded instead of another, the complainant cannot be injured. He has failed to show any such reason in his bill."

In the case cited, the complainant's bill was maintained, but solely because it was proposed to pay the Levee Company's claim *in full*, while the Funding Act authorized the payment of *only sixty cents on the dollar* of the debts to be funded in consolidated bonds.

But upon the question which we have for discussion, the case cited is directly in point and decisive.

There is nothing by way of argument to be added to the intrinsic strength of the reasoning of the Court in the case cited, and its perfect parallelism in all of its features, with some additional strength because of the reservation of the surplus for the retirement of the bonds under the Funding Act, ought to be decisive of this controversy.

This was a case where the State Board of Liquidation was willing to obey the mandate of the Legislature, but a

bondholder had enjoined the Board upon the ground that his contract was about to be impaired. Here, it is the Board of Liquidation of the City Debt which, of its own motion, refuses to comply with the Constitution! Not a single bondholder is in Court to complain that his contract would be impaired; nor does a single bondholder believe that the sale of some of the bonds still in the hands of the Board of Liquidation can in any manner affect his rights.

Under the Funding Act of 1874, every bondholder had an interest in the creation and conservation of a surplus with which ultimately to retire the debt, and the funding of an indebtedness not contemplated or provided for by the act was sufficient to give rise to complaint; and at *first blush* would justify an attack upon the Board for attempting to fund debts other than those provided for in the act, and to that extent diminish the extent to which the bondholder had the right to look for the ultimate payment of his indebtedness; and, as Mr. Justice Bradley said, so long as the amount funded did not exceed the limit, and so long as the tax dedicated by the act to the payment of the debt was not diverted, there could be no impairment of the obligation, because every person that dealt with that issue dealt with it knowing that it was to be an issue of fifteen millions of dollars, and they took their bonds subject to that condition. And so here. The issue was to be ten millions of dollars, to be applied to the retirement of the bonded and floating indebtedness of the City. The taxes levied annually for the payment of the interest and eventually for the retirement of the principal, was safe-guarded, and as long as the limit was not exceeded or the tax diverted, those who dealt with the City and accepted the

bonds of that issue, did it knowingly, and it is immaterial to them to what purpose the excess of the issue was applied, provided the limit was not exceeded.

The Drainage Commission of New Orleans intervened and joined the Board of Liquidation in opposing the relators' demand.

Let us see what is the basis of the Drainage Commission's intervention, and whether it has any interest herein.

Sections 7 and 8 of Act No. 110 of 1890 provide that for the payment of the interest and principal of the Constitutional Bonds, and all other outstanding valid bonds of the City, there shall be levied annually a special *ad valorem* tax of one per cent. upon all the taxable property, real, personal and mixed, in the City of New Orleans—which tax, as soon as collected, shall be paid over to the Board of Liquidation; that out of the proceeds of said tax, beginning with the year 1892, the said Board shall annually provide for the carrying on of the Premium Bond plan, the payment of the interest upon the Constitutional Bonds, and upon all other outstanding interest-bearing bonds of the City, and (after the year 1925) the sinking fund provided for in Section 9 of the act. After making said provisions, and after deducting the expenses incurred by the Board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus is to be passed to the credit of a special fund, to be known as the "Permanent Public Improvement Fund;" the other half of said surplus is to be paid over to the School Board of the City of New Orleans.

The Drainage Commission of New Orleans was created by Act No. 114 of 1896. Section 3 of that act is as follows:

"That that portion of the funds in the hands of the Board of Liquidation under the provisions of Sections 8 and 10 of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public works, etc., from January 1, 1898, is hereby dedicated and applied to the purposes of this act; and all monies and funds now under the control of the City of New Orleans, and hereafter to be received, arising from the sale of street railroad franchises or other franchises, are also hereby dedicated and applied for the purposes of this act."

By section 6 of the same act, the Drainage Commission was empowered to issue bonds to an amount not exceeding five millions of dollars.

Act No. 114 of 1896 was amended by Act No. 63 of 1898. The Commission was authorized to issue bonds only to an amount not exceeding one million five hundred thousand dollars (instead of five millions).

The contention of the Drainage Commission is that it has a vested right in the one-half of the surplus of the one per cent. tax, which formerly accrued to works of permanent public improvement.

That may be true, if the *Legislature* had the power to alter the terms of a *Constitutional Amendment* (that of 1892, the Act 110 of 1890)—a proposition which we have already discussed.

But, however this may be, it is manifest that the yearly *surplus* contemplated by Act No. 110 of 1890 is the amount which may remain on hand after attending to all the matters mentioned in the act, and providing for a $10,000,000 issue of Constitutional Bonds. The act itself uses these terms: "the principal and interest of

the Constitutional Bonds herein authorized to be issued;" (Section 7); "the interest upon *the bonds herein authorized to be issued.*" (Section 8). The sinking fund beginning in 1925, provided for by Section 9, is calculated on the basis of a $10,000,000 issue. The amount of the special tax collected from year to year (one per cent. on all the taxable property in the City of New Orleans) shows that a $10,000,000 issue was to be looked after; for even with a full issue, and even at the present low assessment of taxable property in this City, said special tax would yield a large *surplus*—about half a million a year. It is apparent from every section of the Act of 1890 that the bond issue which is contemplated and which is provided for by said acts is an issue of $10,000,000 and not one of $9,000,000.

The Drainage Commission, therefore, has no interest herein. So long as the limit of the issue is not exceeded, it is, like the holders of the Constitutional Bonds, without right to complain.

That very question of a *surplus* was also one of the features of the Funding Act in the case which we have cited, 92 U. S. 531. The act under consideration in that case (Act of January 24th, 1874), stipulated that the surplus, after paying the interest on the bonds, should be used for the purchase and retirement of the bonds; in other words, that it should go to the bondholders themselves. The Supreme Court of the United States did not hesitate to declare that the bondholders had no cause to complain, because debts other than those specially mentioned in the Act were about to be funded.

And this, after all, is the only question in this case.

After authorizing the issue of $10,000,000 of bonds, for the purpose of funding certain obligations, has the State the power and the right to authorize the use of said bonds for the funding of other valid debts? We believe it is quite clear that the right exists, and that its exercise does not, and in the nature of things cannot, impair the obligation of contracts.

We might perhaps close this brief here; but the Board of Liquidation and the Drainage Commission have presented such an array of figures, and in a manner so calculated to obscure the issue and confuse the Court, that we deem it well to say a few words in this connection.

The Board of Liquidation calls the Court's atttention to the fact that, before the creation of the Drainage Commission, contracts had been made and debts incurred, which were to be paid out of the one-half of the surplus of the 1 per cent. tax, accruing to the Permanent Public Improvement Fund.

That said debts must be paid is undeniable. That they will be paid is certain. Under the legislation relied on by the Drainage Commission, it was to receive that portion of the surplus which the Permanent Public Improvement Fund got formerly, *from and after January 1st, 1898*. But, as explained by Mr. Walmsley, in his testimony, it was agreed between the Board of Liquidation and the Drainage Commission that the outstanding contracts and unpaid debts of the Permanent Public Improvement Fund should first be met and satisfied, and the Drainage Commission consented to draw out its one-half of the surplus of the one per cent.

tax *from and after January 1st, 1899*. So that those debts have been amply secured.

Now, let us look at the figures of the Drainage Commission, as presented in its intervention and in the evidence.

The Drainage Commission has negotiated five hundred thousand dollars of the total one million and a half of bonds which it is authorized to issue, and it has made large contracts for the great work which it is now executing in the City of New Orleans.

It would be supposed, from the pleadings and the piteous appeals of the Drainage Commission, that, if $115,558.33 should be paid to the School Teachers out of the million of Constitutional Bonds unsold, the Drainage Commission will not be able to meet its contracts, the Drainage Bonds will become worthless, and drainage of the City must be abandoned.

But, what are the facts?

The sources of revenue of the Drainage Commission are: all monies or funds arising from the sale of street railroad franchises, or other franchises, and one-half of the surplus of the one per cent. tax under Act No. 110 of 1890.

From the first source, the sale of railroad and other franchises, it is in evidence that the Drainage Commission has already received five hundred and eighty thousand dollars; and it will certainly receive, in the course of years, considerable money from the same source.

From the other source, it will be getting, from and after the 1st day of January, 1899, and until January, 1943, more than two hundred thousand dollars each year.

Mr. Walmsley testified that, at the present time, the surplus under Act 110 of 1890 is between four hundred

thousand and four hundred and fifty thousand dollars per annum. If the entire issue (not $115,558.33 only, but *the entire issue*) of Consolidated Bonds were sold, the surplus would still be over four hundred thousand dollars a year. And this amount would not decrease, but *increase*, from year to year, in proportion to the increase in value of the taxable property in the City of New Orleans upon which the special 1 per cent. tax is levied.

So that there are surely nine millions of dollars in sight for the Drainage Commission, from this source; and the amount will, in all probability, be considerably more.

As the last considerations addressed to the Court cannot be considered, either on the motion to dismiss or to affirm, without trenching upon the merits of the controversy, they were only introduced in order to meet the "piteous appeal" of the Drainage Commission, who will strive to create the impression here, as it did in the lower court, that its rights are imperilled and its obligations impaired, because the State of Louisiana directed the City of New Orleans to pay a just and meritorious debt out of the unissued bonds, the interest upon which, and the retirement of the principal in the end, comes from the pocket of the taxpayer. In conclusion, we respectfully submit:

First. If the decision of the Supreme Court of Louisiana is to be considered as part of the record, then all the claims advanced, both by the Board of Liquidation and the Drainage Commission, are safe-guarded and protected from impairment.

Second. If, however, the decree alone is to be looked to, then we submit that the legislation, appropriating a part

of the unissued series of bonds, does not impair the obligation of the contract.

These considerations, independent of the right of the Board of Liquidation to be heard attacking the constitutionality of State legislation, and of the want of interest in the Drainage Commission, whose rights are in no manner affected, should insure, at the hands of this Court, a dismissal, and the affirmance of the judgment of the Supreme Court of Louisiana.

CHAS. J. THÉARD,
ARTHUR McGUIRK,
Attorneys for Relators.

HENRY L. LAZARUS,
Of Counsel.

APPENDIX.

Petition of Relators.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of the State of Louisiana, upon the relation of Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. McElroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. McLoughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabel Levy, Mrs. M. E. McDonald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemmich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie

Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss M. M. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. McCann, Miss M. McCord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. McCarthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones. Miss Addie McCord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neil, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. McCerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A.

M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen McCarthy, Miss Mary McCann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane McAnulty, Miss Marie Peres, Miss Hanora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. McCarthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Mrs. Anna Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon,

Miss Mary B. Clark, Miss Parmela Cucullu, Miss Rosa Dione, Miss Esther Brandao, Mr. A. P. Chandeler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary McElligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. E. Cooper, Miss Jane Donnelly, Mrs. J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. J. Kleinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredricks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Welsh, Miss K. C. Connelly, Miss Georgia Hodgkins, Miss E. Wilbur, Miss S. S. McEnery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. S. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A.

Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flannagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. M. W. Carroll, Miss M. G. McLorenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. McLirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffole, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rousseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelehan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Delacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Shriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Annie Dyer, Miss Emma T. Rosner, Miss Isabel Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. McManus, Miss Annie Theil, Miss A. A. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary A. Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelley, Miss Mathilda Reuter, Miss

N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Matilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. DeBoer, D. Daignan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrántia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Pation, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carathers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. McCabe,

M. McCormack, E. McGinnis, B. McKeone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Raynal, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, with respect shows:

That in accordance with the provisions of Articles 315 and 316 of the Constitution of the State of Louisiana of 1898, the City of New Orleans has examined into and assumed payment of the claims of the School Teachers and Portresses of the Public Schools of this City for unpaid salaries for the years 1882, 1883 and 1884; and the City Comptroller, by direction of the City Council, has issued to relators, as the original owners of said claims, Certificates of Indebtedness, countersigned by the Mayor, setting forth the amount due by the City to each claimant, and representing the total sum of one hundred and fifteen thousand five hundred and fifty-eight 33-100 dollars ($115,558.33).

As will more fully appear from the said certificates, which will be produced on the trial of this cause, and from the Ordinances adopted by the City Council, Nos. 14,477, 14,591 and 14,675, C. S., copies of which will be filed hereafter.

That a list of all the claimants, and of the amount due each claimant, is made part of Ordinance No. 14,591, and a duplicate of said list is annexed to and made part of this petition.

That Articles 316 and 317 of the Constitution of this State provides that the Certificates of Indebtedness aforesaid, shall be paid by the Board of Liquidation of the City Debt, and that the requisite funds shall be provided by

said Board by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans, of the issue provided for by Act 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said Act and adopted at the general election in 1892.

That due demand has been made of said Board of Liquidation, but that it refuses to obey the mandate of the Constitution.

That the said Board of Liquidation of the City Debt is a corporation, created by Act 133 of the General Assembly for the year 1880; that its domicile is in this City, and R. M. Walmsley, Esq., is its President.

That the refusal of said Board of Liquidation to obey the mandate of the Constitution is both a disregard of duty and a denial of justice, leaving the complainants without relief by ordinary proceedings; and that a writ of mandamus should therefore issue herein.

Relators further represent that the litigation necessitated by the action of said Board will subject the claimants to expense and long delay, which should have been avoided; and that legal interest should be allowed on each certificate of indebtedness from the date of the filing of these proceedings.

Wherefore, relators pray that an alternative writ of mandamus issue herein, addressed to the Board of Liquidation of the City Debt, through R. M. Walmsley, its president, commanding the said Board of Liquidation to pay the Certificates of Indebtedness aforesaid, amounting to the total sum of one hundred and fifteen thousand five hundred and fifty-eight 33-100 dollars ($115,558.33), together with inter-

est on each of said certificates, at the rate of five per cent. per annum from this date until paid, and to provide the requisite funds by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans, of the issue provided for in Act 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by the said Act and adopted at the general election in 1892, or to show cause to the contrary, on a day to be fixed by this Honorable Court; and that, after due hearing, said writ of mandamus be made peremptory.

And relators pray for costs, and for general relief, etc.

(Signed) CHAS. J. THEARD,
ARTHUR MCGUIRK,
Attorneys.

Affidavit by Lucretia B. Wilder and Anna B. Cook, two of the relators: Being duly sworn, depose and say, that all the allegations of the above petition are true and correct.
Nov. 9, '98.

Sworn to and subscribed before me this 9th day of November, 1898.

[SEAL] CHAS. J. THEARD, *Not. Pub.*

(Signed) ANNA B. COOK,
L. B. WILDER.

Service accepted by Board of Liquidation, by R. M. Walmsley, President. Service accepted. N. O., Nov. 9, 1898.

(Signed) B. OF L. CITY DEBT, CITY OF N. O., LA.

ORDER: Let an alternative writ of mandamus issue, as herein prayed for, returnable to this Court, on Thursday, the 17th day of November, 1898, at 11 o'clock, A. M.
N. O., November 9th, 1898.

(Signed) N. H. RIGHTOR, *Judge.*

ANSWER OF THE BOARD OF LIQUIDATION.

Filed November 17, 1898.

State of Louisiana ex rel. Miss L. B. Wilder et als.
vs.
Board of Liquidation of the City Debt.

No. 57,806.
Civil District Court, Div. D.

Now comes the Board of Liquidation of the City Debt, defendant herein, and for answer to plaintiffs' petition, and for return to the alternative writ of mandamus herein, it says:

First. That it denies all and singular the allegations of the petition of plaintiffs, except so far as may be hereinafter specially admitted.

Second. Further answering, respondent shows, that it was created by Act No. 133 of 1880, and that by Section 2 of said Act it is charged with exclusive control and direction of all matters relating to the bonded debt of the City of New Orleans; that in the issue of bonds, or the application of their proceeds, respondent has not only the right, but it is made its duty, by the said Act of 1880, and other Acts amendatory thereof, or supplementary thereto, to examine and be satisfied as to the validity and correctness of any claim, either for bonds or funds under its administration, and that by Section 4 of the said Act respondent is forbidden, under heavy penalties, to purchase, exchange or retire any obligation of the City of New Orleans that shall be deemed fraudulent or invalid by any one of its members, in which latter event, it is forbidden to purchase or retire the same, until the holder or holders shall have applied to the proper Court for relief, when, if final judgment be in his favor, it shall be deemed a valid

obligation of the City; that, by the said section, severe penalties of fines and imprisonment at hard labor are prescribed for the auditing, funding, purchase, or retirement, by any member of the Board, of any obligation not deemed valid, or the use of funds in their custody and for any purpose other than those contemplated by the law.

Third. That respondent is the custodian and administrator for the purpose of meeting the interest upon, and eventually retiring, all bonds of the City of New Orleans, outstanding and unpaid at the date the Constitutional Amendment of 1892 went into effect, Premium Bonds and Constitutional Bonds, issued under said amendment, and the act carrying the same into effect, and as to every act which it has lawful power to do, in relation to the issuance of bonds, or the disbursements of moneys, which are, or come, into its possession, it is a trustee for the parties by law entitled to said bonds, and to receive the funds realized from the sale thereof, or otherwise coming into the possession of respondent.

Fourth. That all of the functions, powers, duties, limitations and restrictions pertaining or applying to respondent by said Act 133 of 1880 are recognized and confirmed by the amendment to the Constitution of the State adopted at the general election of 1892, and Act 110 (or 36) of the General Assembly of 1890, which is part of the said amendment; that the said Constitutional Amendment and act are recognized in full force and effect by Articles 314 and 318 of the Constitution of the State of 1898.

Fifth. Further answering, respondent shows, and specially pleads, in defense of this suit, that Articles 315, 316 and 317 of the Constitution of the State of

Louisiana of 1898 are unconstitutional, null and void and of no effect, on the grounds and for the reasons that they are in violation of Section 10, Article 1, and of the 14th Amendment, of the Constitution of the United States, in that they impair the obligation of contracts, specifically hereinafter set out, deprive persons of their property without due process of law, and deny them the equal protection of the laws, as is more particularly hereinafter set out.

Sixth. Further answering, respondent shows, that the direction of Article 317 of the Constitution of 1898, that your respondent provide the funds requisite to pay the claims described in Articles 315 and 316 of that instrument, by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans, of the issue provided for by Act 110 of the General Assembly of the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act, and adopted at the general election of 1892, is violative of said Section 10, Article 1, and the 14th Amendment, of the Constitution of the United States; as will more fully and in detail appear from the following, to-wit:

(*a*) By Section 1 of said Constitutional Amendment of 1892, which, with Act 110 (or 36) of 1890, part thereof, is the sole authority of respondent, the creature of statute, for the issuance of said bonds, it is declared, that the former is for the purpose of retiring the then existing valid outstanding bonds of the City of New Orleans, including bond certificates, or bonds issued under the Act of the Legislature of 1882, and to retire judgments then or thereafter rendered against the City on float-

ing debt claims, prior to 1879, entitled to be funded, under Act No. 67 of 1884; that the said bonds shall be applied by respondent to the retirement of the said outstanding bonds and judgments, by the sale of the former, and application of the proceeds thereof, to pay or purchase said outstanding bonds or judgments, or by exchanging the said Constitutional Bonds for bonds on the terms and in the mode prescribed by the Legislature.

That for the payment of the interest, and principal at maturity, of said Constitutional Bonds, and other bonds then outstanding and not retired under the amendment, and for the payment of the annual allotments and premiums of the Premium Bonds of said City, the latter is authorized and directed to levy annually, and until the full payment of the said bonds, a special tax of one per cent. on all real and personal property of the City, the same to be paid over, as collected, to, and applied by, your respondent, to the payment of the interest, and principal at maturity, of the said Constitutional Bonds, outstanding bonds not retired, at the date of said amendment, and to the payment of the allotments of Premium Bonds, and premiums, extant in the hands of the holders.

The said tax is declared to be the contract right of the holders of said bonds, and that after the payment of all the annual interest on said Constitutional Bonds, and bonds not retired, as aforesaid, and the payment of said annual allotments of Premium Bonds, and premiums extant in the hands of holders, and after making provision for a sinking fund, at such time and of such amount as the Legislature

prescribes, the surplus of said one per cent. tax shall be disposed of as prescribed by the Legislature.

That Act No. 36, appearing in the published acts along with said Constitutional Amendment, as Act 110, of the General Assembly of 1890, being an act to carry into effect the said constitutional amendment, is, by the third paragraph of the latter, approved and confirmed, in all of its parts, as a contract between the City of New Orleans and the holders of the aforesaid Constitutional Bonds, Premium Bonds, and all bonds then outstanding and not retired, as aforesaid.

(*b*) That by Section 1 of said Act 110 (or 36) of 1890, the City of New Orleans was authorized and empowered to issue bonds to the extent of ten millions of dollars, in order to provide for the retirement of the then outstanding bonded indebtedness of the City of New Orleans, and such other indebtedness as, under laws then existing, was, or thereafter became, entitled to be funded into any series of bonds, Premium Bonds excepted; the said bonds to be so issued for such purposes to be known as Constitutional Bonds of the City of New Orleans.

The said bonds were directed to be delivered to your respondent, to be used for the purposes just described, in accordance with the provisions of said Act of 1890.

That by Section 2 respondent was authorized to sell and dispose of such amounts of said Constitutional Bonds as might be deemed requisite for the purposes thereafter expressed in said act.

That by Section 3 of the said Act of 1890 it is prescribed that the fund derived from said bond sales should be immediately deposited to the credit of a special fund,

called the "Bond Sales Fund;" and by said section it was declared, that the said fund should be used solely and exclusively for the following purposes:

(*A*) Retiring by payment all the then outstanding valid bonds of the City of New Orleans, matured or subject to be called, including certificates for bonds issued under the fourth section of Act No. 58 of 1882.

(*B*) Judgments then or thereafter rendered on floating debt claims, prior to 1879, entitled to be funded under Act No. 67 of 1884.

(*c*) That by Section 7 of said Act of 1890, it is made the duty of the Council of the City of New Orleans to levy for the year 1892, and annually thereafter, until the principal and interest of said Constitutional Bonds are fully paid, a special *ad valorem* tax of one per cent. upon all taxable property in the City of New Orleans.

That by Section 8 respondent is directed, beginning with the year 1892, to annually provide for the carrying of the Premium Bond plan, the payment of the interest upon the said Constitutional Bonds, and of the interest upon all other then outstanding interest bearing bonds of the City of New Orleans; and after the year 1925, for the annual sinking fund necessary to call and retire the number of bonds provided in Section 9 of the act, which are $500,000.00 annually, from and including the year 1926, until the year 1937, and thereafter $700,000.00 annually, until the whole issue shall have been cancelled and retired; that after making in each year the provisions required by said Section 8, and after deducting the expenses incurred by respondent, and after paying any deficiency in the interest fund of previous years, it is directed by said Section

8 that one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the "Permanent Improvement Fund," to be disposed of as is afterwards provided in the Act; the other half of said surplus to be paid over to the School Board of the City of New Orleans, in addition to any fund appropriated by said City out of other funds, to be used in the maintenance and support of the public schools in New Orleans.

(*d*) That by the provisions of Section 10 of said Act the said Permanent Public Improvement Fund shall be used exclusively for the construction of permanent public improvements in the City of New Orleans, such as levees, canals, drainage stations, and the like; all ordinances of the Council therefor to be paid out of that fund, only upon approval, however, by respondent.

(*e*) By Section 11 of said Act your respondent, as established by Act No. 133 of 1880, and as constituted at the adoption of the said Act of 1890, was created a body corporate, with right of existence and succession, until January 1st, 1943; the said section further declaring, that nothing in said Act of 1890 contained should be construed to affect or change in any manner the duties, powers and functions of respondent, under laws then existing, not inconsistent with said Act, but that said duties, functions, rights and powers were confirmed and maintained in all respects.

(*f*) That the functions, powers and responsibilities of respondent, as hereinbefore set out, and as existing under the laws creating and pertaining to it, are impliedly, if not expressly, recognized and confirmed by Article 318 of the

Constitution of the State, of 1898, and are so expressly recognized as in full force and effect by Article 314, of said Constitution of the State, of 1898.

Seventh. That by Act No. 114 of the General Assembly of 1896, particularly Section 3 thereof, that portion of the funds in the hands of respondent, under the provisions of Sections 6 and 10 of Act 110 (or 36) of the General Assembly of 1890, accruing to public works, etc., meaning the one-half of the surplus of the one per cent. tax dedicated to works of permanent public improvement by said sections of the said Act of 1890, is dedicated and applied to the specific public improvement of draining the City of New Orleans, substantially in accordance with the plan for such drainage adopted by the Council of said City by Ordinance 10,091, Council Series, approved July 10th, 1895; that by Section 6 of said Act, the Drainage Commission created by the latter, to control and execute the said drainage, is given the power to raise funds for the purpose of said work, by the issuance and disposal of its negotiable bonds, to an amount not exceeding five millions of dollars, and all moneys and funds dedicated and applied by the said act to the purposes thereof, are consecrated to the payment of the principal and interest of said bonds; and your respondent shows, that the said one-half of the said surplus of the said one per cent. tax, mentioned and described in Sections 6 and 10 of said Act of 1890, are embraced within such description.

And by Section 7 of said Act of 1896, all the provisions thereof respecting the dedication and application of funds and moneys shall constitute a contract with the holder or

holders of the said bonds, the obligation of which shall not be impaired.

That by Act No. 63 of the General Assembly of 1898, the said Act of 1896 is amended in certain particulars, but the said dedication of the said funds to the payment of the principal and interest of said bonds is repeated by Section 7 thereof, which also declares that all the provisions of the act respecting the dedication and application of funds and moneys shall constitute a contract primarily with the holder or holders of said bonds, and also with every person or corporation that may have entered into contracts with the said commission; and the obligation of said contract, as to the dedication and application of funds and moneys, shall not be impaired, and may be enforced by any holder of said bonds, or by any contract creditor of said commission, by proper proceedings.

Eighth. That there have been issued and are now outstanding and unpaid $8,998,500 of said 4% Constitutional Bonds, and .....dollars of Premium Bonds, to carry which and to execute in other respects the Premium Bond plan, the sum of $359,940 is annually required; that there are ordinances passed by the Council to provide for sums due upon contracts for permanent public improvements, entered into prior to the adoption of said Act 114 of 1896, $209,985.05; of bonds issued by the said Drainage Commission, $500,000; of obligations resulting from contracts made by said Drainage Commission, outstanding and unpaid, the sum of ....dollars.

That if any burdens, other than those enumerated in the said Constitutional Amendment of 1892, and the said Act No. 110 (or 36) of 1890, be placed upon said one per cent.

tax, or made payable out of the same, or upon the funds derived from the sale of said Constitutional Bonds, there will be caused a corresponding diminution of the surplus of said tax, divided, as aforesaid, between said Permanent Public Improvement Fund, dedicated and consecrated, as aforesaid, to the payment of the bonds, said Drainage Commission, and the School Board of the City of New Orleans, for the support and maintenance of the public schools; that by Article 254 of the Constitution of 1898, it is expressly provided that the schools of the City of New Orleans shall continue to receive from your respondent the amounts to which they are entitled under the Constitutional Amendment of 1892; so that if Articles 315, 316 and 317 of the Constitution of 1898 are valid and constitutional, as regards the Constitution of the United States, which is denied, their fair construction is that they were intended to have no effect upon, and in no respect diminish, the one-half of said surplus given by the Constitutional Amendment of 1892, and the act to carry the same into effect, to the School Board of the City of New Orleans, for the support and maintenance of the Public Schools.

Ninth. Further answering, respondent shows, that in any event, in no sense waiving, but, on the contrary, insisting, upon all of the defenses hereinbefore set out, that it was beyond the power and authority of the Constitutional Convention of 1898, to adopt said Article 317 of said Constitution: that the adoption thereof was in violation and disregard of the prohibitions contained in Section 3 of Act No. 52 of the General Assembly of 1896, particularly the first paragraph thereof; by which said act

provision was made for the submission to the people of a proposition to hold a convention for the purpose of framing and putting into effect a new Constitution, and to fix the powers of said convention; that by said section it is provided that the said convention shall be and was prohibited from enacting, ordaining or framing any article or ordinance whereby the bonded indebtedness of the State, or of any parochial, municipal, levee, or other political corporation, should be affected, impaired or scaled, or the principal or interest thereof remitted, reduced, suspended, or abolished, without the consent of the holders of such bonds or securities.

That said proposition, with all its conditions and limitations, was accepted and approved by a majority of the duly qualified electors of the State, at an election held on the second Tuesday in January, 1898, upon the terms and conditions set out in said act; that there was administered by the Chief Justice of the State to each delegate of said convention the oath set out in section 4 of said act, to the effect that he would observe and obey the limitation of authority contained in the act under which the convention was assembled; that the sole authority for the assembling of said convention was the said Act of 1896, and the approval thereof by a majority of the duly qualified electors of the State, and the taking of the said oath by each delegate, as aforesaid, signified their willingness to be bound by the limitations placed by said act, and a majority of the duly qualified electors of the State; which limitations would, however, have been binding without the administration of said oath.

That said Article 317 affects and impairs, both in prin-

cipal and in interest, the 4% Constitutional Bonds of the City of New Orleans, all other bonds of said City, other than Premium Bonds, outstanding at the date of the said Constitutional Amendment of 1892, Premium Bonds, bonds issued by the Drainage Commission, contracts entered into for works of permanent public improvement by the City of New Orleans, prior to the adoption of Act 114 of 1896, and contracts entered into by the Drainage Commission for the doing of work, the execution of which was committed to them; that none of the holders of said bonds or contracts, which are indebtednesses or securities in the sense of the second paragraph of Section 3 of said Act 52 of 1896, gave their consent to the adoption of said Article 317, and hence, that the same is null and void, for a want of power in the said Convention to adopt it.

Tenth. Further answering, respondent shows, that Articles 315, 316 and 317 of the Constitution of 1898, if there was power in the Constitutional Convention to adopt them, which, as aforesaid, is denied, are, and if carried into effect, will impair the obligations of the following contracts:

(*a*) The contract with the holders of the Constitutional Bonds of the City of New Orleans created and established by the said Constitutional Amendment of 1892, and Act 110 (or 36) of 1890, which contract is that none of said bonds shall be issued, nor the proceeds of the sales thereof applied, nor any portion of the one per cent. tax thereby provided used, for any purpose other than those enumerated in said amendment and Act; and the purposes for which the said Articles of the Constitution provide for the issuance of Constitutional Bonds are not enumerated in nor authorized by the said Constitutional Amend-

ment and Act; a statement of the number and amounts of said bonds now outstanding and unpaid being herewith filed and marked Exhibit "A."

(*b*) The holders of outstanding bonds of the City of New Orleans not retired by said Constitutional Amendment of 1892, other than Premium Bonds; a detailed statement of which bonds is filed herewith as part hereof, and marked as exhibit "B."

(*c*) The holders of Premium Bonds, outstanding and unpaid; a detailed statement of which is filed herewith as part hereof, and marked exhibit "C."

(*d*) The contract or vested right in favor of the School Board of the City of New Orleans, or the schools, or the school children, or their parents, resulting from the dedication of one-half of the surplus of the said one per cent. tax found in the said Constitutional Amendment of 1892, and the Act of 1890, such portion of said surplus having been held, in Fisher vs. Board of School Directors, 48th An. 1077, to be vested right, of such a character as cannot be impaired by legislation, and if such vested right be of such character, it is equally beyond impairment by Constitutional enactment.

(*e*) The contract of the holders of ordinances of the City of New Orleans directing the payment of sums due under contracts for work of permanent public improvement entered into prior to the adoption of Act 114 of 1896; a detailed statement showing the number and amounts of said contracts, and the parties thereto, being filed herewith as part hereof, and marked exhibit "D."

(*f*) The holders of bonds issued by the Drainage Commission, and the contractors payable out of said fund; a

statement of the amount of which bonds now outstanding is filed herewith as part hereof, and marked exhibit "E."

That the said Articles 315, 316 and 317 of the Constitution of 1898, particularly the article last named, are null, void and of no effect, for the reason that they impair the obligation of the said contracts, deprive the owners thereof of their property without due process of law, and deny them the equal protection of the laws; all in violation of Section 10, Article 1, and the 14th Amendment, of the Constitution of the United States.

Further answering, respondent shows, that by law it is a trustee for the holders of all bonds of the City of New Orleans outstanding and unpaid at the date said Constitutional Amendment of 1892 went into effect, and which have not been retired under the latter; for all holders of said Constitutional Bonds; for all contractors of the City of New Orleans entitled to be paid out of the one-half of the surplus of the said one per cent. tax provided by said Constitutional Amendment of 1892, and the Act of 1890; for all contractors of the Drainage Commission, having rights upon the same said fund; for all holders of bonds issued by said Drainage Commission; for all holders of Premium Bonds; that it is a trustee of all moneys received by it for the benefit of those who are entitled to it by law; that relators have no right or title of any description to the issue of Constitutional Bonds in any amount, nor to any portion of the proceeds of the sale thereof, nor to any portion of the one per cent. tax levied and collected and paid over to respondent, under said Constitutional Amendment of 1892, and the Act of 1890.

Wherefore, respondent prays, that the alternative writ of mandamus herein issued be quashed and set aside; that plaintiffs' demand be rejected, and their suit dismissed, with costs, and for general relief.

(Signed) BRANCH K. MILLER,
Atty. for Respondent.

State of Louisiana, }
Parish of Orleans. }

Personally appeared Robert M. Walmsley, who, being duly sworn, deposes and says: that he is President of the Board of Liquidation of the City Debt, defendant herein; that the facts and allegations in the foregoing answer are true and correct.

(Signed) R. M. WALMSLEY.

Sworn to and subscribed before me this 17th day of Nov., 1898.

(Signed) W. HY. ALLEN,
Depty. Clerk.

PETITION OF INTERVENTION.

State ex rel. Miss Wilder et al vs. The Board of Liquidation of the City Debt. } No. 57,806. Civil District Court, Parish of Orleans. Div. D.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

The petition of intervention herein of the Drainage Commission of New Orleans, a body politic created by the General Assembly of Louisiana, by the Act No. 114 of 1896, approved July 9, 1896, which Act has been amended by Act No. 63 of 1898, approved July 9th, 1898, of which

R. M. Walmsley of the City of New Orleans is President, respectfully shows:

First. That your petitioner has a legal right and interest to intervene in this cause, and to oppose the claim and demand of the relator herein, and it refers to the said acts of legislation and makes the same a part of this petition of intervention.

Second. That as appears by said Act No. 114 of 1896, the City of New Orleans devised a certain plan of drainage, and the same was adopted by the Council of said City, by ordinance of the City, approved July 10th, 1895; and the said plan of drainage and a copy of the ordinance adopting the same are hereto annexed and made part of this petition as Exhibits 1 A and 1 B; and the said plan of drainage was adopted by the General Assembly of Louisiana by said Act of 1896, with power to said Drainage Commission to modify the same as circumstances might require.

Third. That by said legislation of the General Assembly of Louisiana of 1896, that portion of the funds in the hands of the Board of Liquidation, under the provisions of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public works, etc., that is to say, to permanent public improvements, was and is dedicated and applied for the purposes of drainage of the City of New Orleans, under the provisions and for all the purposes of the said Act No. 114 of 1896, as well as all moneys and funds then under the control of the City of New Orleans, or thereafter to be received, arising from the sale of street railroad franchises and other franchises; and it was provided that all moneys or funds thus dedicated should be drawn and ex-

pended by said Drainage Commission by checks signed by the President and Secretary, and countersigned by the Mayor.

Fourth. That by the sixth section of said Act 114 of 1896, it was provided that the works performed by said Commission should, so far as possible, be done in such manner as to benefit all parts of the City, without discrimination as to locality, and in orderto raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans should have power to issue and dispose of its negotiable bonds to an amount not exceeding $5,000,000 in sundry denominations, bearing interest at a rate not exceeding five per centum per annum, payable semi-annually, to be sold by said Commission at not less than par; and further provision was made in said section for the form and maturity of said bonds, and it was further therein provided that all moneys and funds dedicated and applied as aforesaid by said Act to the purposes thereof, were and are consecrated to the payment of the principal and interest of said bonds; and by section 7 of said act it was further provided that all the provisions of said act respecting the dedication and application of funds and money should constitute a contract with the holder or holders of bonds issued as aforesaid, the obligation of which contract should not be impaired and should be enforceable by any holder of said bonds by proceedings of Mandamus and Injunction, or by other proper proceedings in Court. That by said amending Act No. 63 of 1898, said Sections 6 and 7 of the said Act of 1896 were amended and re-enacted so as to limit such issue to $1,500,000,

in denominations of $1,000 each, and it was declared that all moneys and funds dedicated and applied to purposes of drainage aforesaid were primarily consecrated to the payment of the interest on said bonds and the redemption of the principal thereof, with the details set forth in said amending Act; and that all of the said provisions respecting the dedication and application of funds and moneys should constitute a contract primarily with the holder or holders of said bonds, as aforesaid, to the extent aforesaid, and also with each and every person or corporation that might have entered into contracts with the said Commission, and the obligation of said contract as to dedication and application of funds and moneys should not be impaired, and might be enforced by any holder of said bonds or by any contract creditor of said Commission by proceedings of mandamus and injunction, or by other proper proceedings in Court.

Fifth. That in proceedings brought by the State of Louisiana against the persons composing the said Drainage Commission of New Orleans and decided by the Supreme Court of Louisiana June 21, 1897, the said Act No. 114 of 1896 was decided to be a proper and valid act of legislation, and the contracts hereinafter set forth were entered into in view of said decision.

Sixth. That on the faith of the drainage legislation, above set forth, of 1896, the dedication and consecration of funds thereby, and the contract rights therein recognized and established, your intervenor has entered into large contracts for the construction of the work so directed to be done, and among others as follows:

With the National Contracting Co., by contract of August 9, 1897, for an amount of work estimated at	$1,768,428 00
For the Jordan Avenue Canal, with F. B. Camors, by contract of April 22, 1898, total cost	10,054 67
For Seventeenth St. Canal, with E. A. Grasser, by contract of Jan. 18, 1897, total cost	46,170 70
Tulane University, December, 1897	2,500 00
For reconstruction and excavation of certain canals, by contract with J. J. Keegan, by contract of April 2, 1898	7,341 98
Making in all a total of	$1,834,865 35

Whereon payments have been made of $317,552.05, leaving outstanding and yet to be paid upon said contracts as completed up to the 12th of May, 1898, the sum of $1,516,913.30. Since May 12, 1898, there has been paid upon said contracts, or some of them, the sum of $479,811.01, leaving still to be paid upon said contracts the sum of $1,037,102.29, which must be met with funds set apart and consecrated by the Act of 1898, No. 114, and cannot be met if said funds are reduced or impaired in anywise.

Seventh. That when said contracts were made it was well understood, and was a fact, that the funds so dedicated by said Act, coming in as they were expected to come from time to time, were not sufficient to pay for the work to be done under said contracts, especially under that of the National Contracting Company, which was the principal one in amount, as the payments would fall due, but that the bonds provided by the 6th section of the said Act of 1896

would be issued and sold in accordance with the plan of speedy and extensive work contemplated by said section.

That accordingly, under said provisions, this intervenor has advertised and sold to the highest bidder, and for sums considerably above par, its negotiable bonds made in accordance with said law to the amount or issue of $500,000, dated November 1, 1897, having forty years to run from said date, bearing interest at the rate of five per cent. per annum, payable semi-annually, and said bonds are now outstanding in the hands of *bona fide* purchasers, and it will be necessary in like manner to sell the remaining million dollars of said bonds.

Eighth. That all of the funds, so as aforesaid dedicated and consecrated by said drainage legislation to the performance of said work of drainage, and the payment of said contracts, and of the principal and interest of said bonds, issued and to be issued, are entirely and absolutely necessary and essential for said purposes, and if any of the funds coming to intervenor under said Act of 1896, from the said Law 110 of 1890, and from the portion thereby dedicated to permanent public improvements and so, as aforesaid, consecrated to the work of this intervenor, are diverted to any other purpose, such diversion will be and is hereby averred to be a violation of the provisions of the said Act No. 110 of 1890 and the Constitutional Amendment proposed thereby and adopted in 1892; and a violation of the said Acts Nos. 114 of 1896 and 63 of 1898, and an impairment of the obligation of the contracts made and established by said Act No. 110 of 1890 and by said Constitutional Amendment of 1892; and an impairment of the obligation of the said contracts so entered into by this inter-

venor with said contractors, and especially with the National Contracting Company aforesaid, and of the contracts evidenced by said bonds issued and sold by intervenors for the purpose of carrying out said contracts and to be issued and sold.

Ninth. That the contracts of intervenor hereinbefore set forth were made and entered into and its said bonds prepared and provided as aforesaid before the adoption of the Constitution of 1898, to-wit., before May 12, 1898. That the alleged assumption by the City of New Orleans of the claims of relators was not made until on and after July 26, 1898, and long after the said contracts of this intervenor had been entered into, as aforesaid; and after arrangements had been made for the issue of said bonds, and after $500,000 of same had been advertised, sold and issued as aforesaid, as will appear by the ordinances referred to and relied upon by relators.

Tenth. This intervenor further alleges that the Articles 315, 316 and 317 of the Constitution of Louisiana, and any other provisions of said instrument upon the same subject matter, as sought to be applied by relators in this proceeding, and for the purpose of obtaining the relief claimed by them herein, are illegal, null, void and unconstitutional:

1. They violate the Enabling Act No. 52 of 1896, approved July 7, 1896, of the Legislature of Louisiana, whereby the Convention that framed the Constitution of 1898, which was to be adopted without submission to the people, was strictly limited in its powers, and was prohibited from enacting or ordaining or framing any article, or ordinance on the subjects so withheld from its compe-

tence, especially any article or ordinance whereby the bonded indebtedness of any parochial, municipal, levee, or other political corporation of the State of Louisiana should be affected, impaired or scaled, or the principal or interest thereof limited, reduced, suspended or abolished, without the consent of the holders of such bonds or security, which consent has never been given by any holder.

2. They violate Section 10 of Article 1 of the Constitution of the United States, whereby the State of Louisiana is forbidden to pass any law impairing obligations of contracts.

3. They violate the provisions of Article 14 of the amendments of the Constitution of the United States, which prohibit any State from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or depriving any person of property without due process of law.

4. They violate the provisions of and impair the obligations of the contracts established under the enactments of said Act No. 110 of 1890 and the Constitutional Amendment submitted thereby and adopted in 1892:

(*a*) By the issue and sale of bonds for purposes not provided, but inhibited by said Act and amendment.

(*b*) By impairing and infringing upon the surplus of proceeds from the tax so provided for permanent public improvements by said Act and amendment, and so as aforesaid consecrated and dedicated to drainage by the said Act of 1896.

(*c*) By impairing the obligation of the contracts made under said Act of 1890 and Amendment of 1892, and especially provided for in Section 16 of said Act of 1890.

5. They impair the obligation of the contracts made as aforesaid by this Intervenor, and the contract obligations in favor of the holders of bonds issued and sold by intervenor under the said Drainage Act of 1896 and its amendments as aforesaid, and bonds still to be issued, which depend for their fulfillment and solution upon said funds dedicated as aforesaid by the Act of 1896 and amendments, and cannot be met unless said funds remain unimpaired.

Eleventh. That the funds dedicated to the work of intervenor being so established and limited, and said contracts having been made, and said bonds issued by it, it is the legal duty of the Drainage Commission of New Orleans to intervene herein and to protect said funds and the contracts made and the bonds issued by it. It specially claims the rights, privileges and immunities hereinbefore set up under the Constitution of the United States, as well as the other rights, privileges and immunities hereinbefore pleaded.

And the premises considered, your intervenor prays leave to intervene herein and to oppose the claims and demands of relators, and for due citation and other process, and that the demand of the relators may be rejected, and for costs and general relief.

(Signed) HOWE, SPENCER & COCKE,
Attys. for Intervenor.

Nov. 15, 1898.
Service accepted for relators.

(Signed) CHAS. J. THEARD,
ARTHUR McGUIRK,
Attorneys.

ORDER: Let this petition of intervention be filed as prayed for.

(Signed) N. H. RIGHTOR, *Judge.*

New Orleans, Nov. 15, 1898.

State ex rel. Miss L. B. Wilder et al.
vs.
The Board of Liquidation of the City Debt Drainage Commission, Intervenor.

No. 57,806.
Civil District Court,
Ph. of Orleans,
Division D.

Now come the relators, Miss L. B. Wilder and others, by their undersigned counsel, and for answer to the petition of intervention of the Drainage Commission herein filed, they deny each and every allegation contained in said petition of intervention, and deny specially that the intervenor has any interest herein.

Wherefore, relators pray that said petition of intervention be dismissed, at intervenor's cost, and for general relief, etc.

(Signed) ARTHUR MCGUIRK,
CHAS. J. THEARD,
Attys.

State ex rel. Miss L. B. Wilder et als.
vs.
Board of Liquidation of the City Debt.

No. 57,806.
Civil District Court,
Division D.

Now come the Board of Liquidation of the City Debt, defendant herein, and for answer to the petition of intervenor, it admits the facts stated therein, and submits the issues raised by said intervention to the judgment of the Court.

Wherefore, defendant prays to be hence dismissed, with costs, and for general relief.

(Signed) BRANCH K. MILLER,
Atty. for Defdt.

OPINION OF THE SUPREME COURT OF LOUISIANA.

State ex rel. Wilder et al.
vs.
Board of Liquidation of City Debt et al. } No. 13,034.

1. The surplus of the 1 per cent. tax in New Orleans set aside for permanent public improvements by Act 110 of 1890 and the constitutional amendment of 1892 is the surplus which may remain after applying the tax collected to the satisfaction of the debts and claims therein specially enumerated as those which were to be provided for through the tax.
2. The unpaid salaries for the years 1880, 1881, 1882, 1883 and 1884, of teachers in the public schools in New Orleans, under contracts with the City School Board of that City, were not debts of that City, and were not intended to fall under the provisions of the funding law of 1890 and the constitutional amendment of 1892. They only became obligations of the City by the latter's assumption of them under the constitutional amendment. The constitutional convention had the power to have those claims paid through the 1 per cent. tax, but only subordinately to the rights upon the tax in favor of creditors holding contract rights at the date of the adoption of the Constitution. Those rights could not constitutionally be impaired.
(Syllabus by the Court).

Appeal from Civil District Court, Parish of Orleans. Nicholas H. Rightor, Judge.

Action by the State, on the relation of L. B. Wilder and others, against the Board of Liquidation of the City Debt and others. Judgment for plaintiff, and defendants appeal. Modified.

Branch K. Miller, for appellant, Board of Liquidation of City Debt. Howe, Spencer & Cocke, for appellant, Drainage Commission of New Orleans. Charles J. Théard, Arthur McGuirk and Henry L. Lazarus, for appellee.

NICHOLLS, C. J. By the 315th Article of the Constitu-

tion the City of New Orleans was authorized and required to examine into, and assume payment of, the obligations of the board of directors of the public schools of the parish of Orleans for unpaid salaries of school teachers and portresses, and other legitimate claims against said school board for the years 1882, 1883 and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886 and 1887, then (now) in the hands of the original holders, who have in nowise parted with their rights of ownership, or pledged the same, as may be found equitably due by said board. By the 316th Article the city council was directed to issue certificates of indebtedness to the owners of said claims, when examined and found to be equitably due, and that all such certificates should be paid by the board of liquidation. The article provided that, if any of the claims aforesaid should be rejected by the city council, the decision thereon might be reviewed by any court of competent jurisdiction, and the judgment of the court thereon should, if in favor of the claimant, be likewise paid by the board of liquidation. The 317th Article directed that the funds requisite to pay said claims should be provided by the sale of a sufficient number of the constitutional bonds of the City of New Orleans of the issue provided for by Act No. 110 of the general assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act, and adopted at the general election in 1892. Acting under and by virtue of the provisions of these articles of the Constitution the city council of New Orleans examined into, and assumed payment of, the school teachers and portresses of the public schools of that City for the years 1882, 1883 and 1884; and the city comptroller, by direction of the council, issued certificates of indebtedness, countersigned by the mayor, setting forth the amount due by the City to each claimant, and representing a total sum of $115,558.33. The board of liquidation, on presentation of the same to them for payment, refused to pay the same, on the ground that the mode of payment provided by Article 317 of the Constitution, to-wit., by the sale of bonds of the

issue provided for by Act No. 110 of 1890 (Const. Amend. 1892), would impair the obligation of contracts, and therefore be a violation of the Constitution of the United States. The holders of the certificates thereupon cited the board of liquidation into the Civil District Court, to show cause why a writ of mandamus should not issue against them, commanding them to pay the certificates, together with legal interest thereon, from judicial demand until paid, and provide the requisite funds by the sale of a sufficient number of said constitutional bonds. The board of liquidation answered, pleading first the general issue. Averring its right and its duty so to do, it resisted plaintiffs' demand on the assigned grounds, and prayed that their demand be rejected. The drainage commissioners of the City of New Orleans intervened in the case, joining the defendants in resisting the demand of the plaintiffs. The latter excepted to the right of the drainage commission to intervene, and its right and authority, and that of the board of liquidation, to set up the issues tendered. The district court dismissed the intervention of the drainage commission, and ordered the mandamus prayed for to issue. The drainage commission and the board of liquidation appealed.

In their brief, plaintiffs say: "It might well be asked what right the board of liquidation had to assail the validity of the Constitution of Louisiana. Created by Act No. 133 of the Legislature of 1880, the board of liquidation is merely a servant of the people. Its members are trusted clerks, charged generally with the liquidation of the city debt. That is all. They are not above the law. They are creatures of the law. If it be true that the Act of 1890, or constitutional amendment of 1892, confided to them a special trust, it is also true that they received said trust from the sovereign State of Louisiana, and that she may well modify the instructions which she had seen fit originally to give. It cannot be admitted for a moment that the board of liquidation would have the right in any case to disregard and disobey the mandate of the Constitution, and resist and defy the will of the people." A similar claim

was advanced by State vs. City of New Orleans, 42 La. An. 96, 7 South. 674, and held by this court to be not well founded. We adhere to that conclusion, and adopt as correct the reasons assigned by the court for reaching it. It by no manner of means follows that a board which owes its existence to statute authority, and has its powers and duties defined thereby, is necessarily under a continuing liability to have its future conduct and its future duties controlled by the same authority. There are doubtless cases where this power of control continues absolutely, but there are others where, though it may be continued, it is under limitations, and others again, when it ceases altogether. This question has to be determined in each case by the nature and character of the duties cast upon the board; the rights of third parties which may have resulted from an acceptance of the trust; and the duty and liability of the board itself, and its members, as resulting from the same fact. In the case just referred to the court said: "It would be passing strange, indeed, if, after the defendants here have been commanded to show cause why the relief sought against them should not be granted, they could be met, when they appear in response, with the objection that they have no standing in court." McVeigh vs. U. S., 11 Wall. 267; Baker vs. Michinard, 17 La. An 251; Pasteur vs. Lewis, 39 La. An. 11, 1 South. 307. The court further said it did not hold in State vs. City of New Orleans, 41 La. An. 156, 6 South. 592, that the City did not possess the right of pleading its unconstitutionality and that they must not be heard.

Article 254 of the Constitution of 1879, referring to the powers and duties of the legislature in respect to the City of New Orleans, said: "The general assembly at its next session after the adoption of the Constitution shall enact such legislation as may be proper to liquidate the indebtedness of the City of New Orleans and apply its assets to the satisfaction thereof. It shall have authority to cancel the charter of said City and remit its inhabitants to another form of government, if necessary." This article was adopted in view of the very many sweeping alterations

made in the Constitution in the powers of taxation, not only of the different parish and municipal corporations of the State, but of the State itself, and in the extent of legislative control over corporations, both private and public. Article 45 prohibited the general assembly from granting or authorizing any parish or municipal authority to grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor, or authorize the payment of any claim against the State, or any parish or municipality of the State, under any agreement or contract made without express authority of law, and all such agreements or contracts should be null and void. By Article 46 the general assembly was prohibited from passing any local or special law creating corporations, or amending, renewing, extending, or explaining the charter thereof, provided this should not apply to the corporation of the City of New Orleans, or granting to any corporation any special or exclusive right, privilege, or immunity, or legalizing the unauthorized or invalid acts of any officer, servant, or agent of the State, or of any parish or municipality thereof. Article 202 declared that the taxing power might be exercised by the general assembly for State purposes, and by parish and municipal corporations, under authority granted to them by the general assembly, for parish and municipal purposes; but by Article 209 the State tax on property for all purposes whatever, including expenses of government, schools, levees, and interest, should not exceed in any one year 6 mills on the dollar of its assessed value, if the ordinance regarding the bonded debt of the State should be adopted and ratified by the people, and, if said ordinance should not be adopted and ratified by the people, said State tax for all purposes should not exceed in any one year 5 mills on the dollar of the assessed valuation, and no parish or municipal tax for all purposes whatsoever should exceed 10 mills on the dollar of valuation. Article 229, however, directed that the general assembly should provide that every parish might levy a tax for the public schools therein, which should not exceed the State tax, provided that, with such tax, the whole amount

of parish taxes should not exceed the limits of parish taxation fixed by the Constitution. In 1880 the general assembly passed Act No. 133, entitled "An act to liquidate the indebtedness of the City of New Orleans and apply its assets to the satisfaction thereof, to create a board of liquidation and prescribe their duties and to provide for a fiscal agent, and for the levying of a special tax to pay said interest." For the purpose of carrying out the purposes of the act, and liquidating the indebtedness of the City, a board, designated as the "Board of Liquidation of the City Debt," was created, to which the duty was assigned or delegated of retiring and canceling "the entire debt of the city," except the floating debt created up to the date of the passage of the act (April, 1880). The board was authorized and directed to have certain described bonds prepared, which it was declared were to be used exclusively for the purpose of negotiation or of exchange, as therein provided for. The method provided for for retiring the debt was either by the sale of the new bonds, or by their exchange for old ones. It was provided that the entire issue of new bonds to be sold or exchanged should not exceed $10,000,000. It was declared that nothing in the act should be construed as affecting Act No. 31 of 1876, known as the "Premium Bond Act;" and it was made the duty of the city authorities to turn over and transfer to the board all moneys collected on account of the tax levied in accordance with the provisions of that act; and it was made the duty of the board to apportion the proceeds of said tax, and apportion the same pro rata, and in the proportion which each form of bonded indebtedness should bear to the entire amount of the City's debt; and such portions of the said proceeds of tax as should not properly belong to the outstanding amount of premium bonds were directed to be applied to the payment of the bonds created by the act then being enacted. The act required the city council to levy an annual tax, calculated upon the assessment of the preceding year, less 20 per cent., sufficient to pay in full the interest on all the bonds issued under its provisions; and it directed that any tax levied should continue in force until superseded by a

new tax levy for the same purpose. The surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board, after paying the interest coupons of the bonds to be issued under the act, were ordered to be used for the purchase and retirement of any valid bonds of the City created before the passage of the act, at a rate not exceeding 50 cents on the dollar, or, at the discretion of the board, for the retirement of the bonds created under the act, at a price not exceeding par; and the bonds or obligations purchased, exchanged, or retired were directed to be canceled. The fourth section of the act subjected the members of the board to a criminal prosecution, should they knowingly audit, fund, purchase, or retire for value any illegal obligation of the City, or use any portion of the bonds authorized to be issued, or their proceeds, for purposes otherwise than those contemplated by the act. In 1882 the general assembly, by Act No. 58 of that year, authorized the City of New Orleans to renew and extend payment of her outstanding bonds, other than premium bonds, to provide the rate of interest on the bonds as renewed or extended, and to levy a tax to pay the same. This tax, the act declared, should never exceed one-half of 1 per cent., nor be less than one-quarter of 1 per cent., on the assessed valuation of all taxable property, and should be turned over, as collected, to the board of liquidation, in the same manner as the premium bond tax, to be by them deposited to the credit of the city debt fund, and to be applied exclusively for the objects and purposes therein declared. The act directed that all funds then, or which might be at the date of the passage of the act, in the hands of the board of liquidation under the existing laws, should be deposited with the fiscal agent of the board, to the credit of the account known as the "City Debt Fund," which fund should be used exclusively to the purchase on the most favorable terms, not exceeding par, or the face value, of the outstanding bonds or coupons, or certificates therefor, of the City, which were extended or to be extended under the provisions of the act then being enacted, provided that said city

debt fund should be used first to provide for and pay the interest on the bonds and certificates contemplated in the act; and the City was directed in its annual budget, to make an appropriation to carry out the provisions of the act. The seventh section directed that the surplus proceeds of any of the premium bond tax of each year remaining in the hands of the board of liquidation, or surplus on hand at the time of the passage of the act, after all the drawn series, interest and premiums thereon, exigible or due to the holders thereof, have been provided for or fully paid, should also be deposited with the fiscal agent of the board, to the credit of the account known as the "City Debt Fund," and applied exclusively as provided in section 5. The tenth section declared that the act, in all its parts, provisions, terms, conditions, obligations, and limitations, should be deemed to be, and be, a valid, binding contract between the State of Louisiana, the City of New Orleans, its residents, citizens, and taxpayers, and the holders of the bonds authorized in the act to be extended.

In July, 1884, the general assembly passed an act known as No 67 of that session, entitled "An act to amend and reenact sections 2, 3 and 5 of an act entitled 'An act to liquidate the indebtedness of the City of New Orleans and to apply its assets to the satisfaction thereof; to create a board of liquidation and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest,' approved April 10th, 1880; and to further provide for the redemption of the bonds authorized herein, the payment of the interest on the same when said tax is not levied; and for the disposition and sale of said assets and other property." The act so amended is the act hereinbefore referred to as Act No. 133 of 1880. The amendment to the second section consisted in extending the powers and duties of the board of liquidation so as to give it exclusive control and direction of not only all matters relating to the "bonded debt" of the City, but of all matters relating to the "judgment and bonded" debt of the City, and in altering the form and terms of the bonds which the board had been directed to have prepared. The third

section of the Act of 1880, as amended, authorized and required and made it the duty of the board to retire and cancel the entire debt of the City standing at the time of the passage of the amending act in the form of executory judgments, and registered under the provisions of Act No. 5 of 1870, and that which thereafter might become merged into executory judgments, and likewise registered, except the floating debt, or claims created for and against the year 1879 and subsequent years. It declared that it was the full intent and meaning of the amending act to apply solely the privileges thereof to executory judgments at that time rendered (the passage of the new act) against the City, and to such floating debt or claims against said City for 1878 and previous years merged and to be merged into executory judgments, whether absolute or rendered against the revenues of any particular year or years previous to the year 1879. For the purpose of retiring and canceling said judgment debt the board was authorized and required either to sell the bonds to be issued under the act at not less than their par value, and apply the proceeds thereof to the payment of the said judgments as specified, or to issue said bonds in exchange thereof. In July, 1890, the general assembly passed an act which appears in the published acts of that session under the number 110, but is referred to in the amendment to the Constitution of 1879, adopted in 1892, as Act No. 36. This act, though it preceded the adoption of the amendment, was entitled, "An act to carry into effect the constitutional amendment passed at the present session of the Legislature, relative to the bond debt of the City of New Orleans, and to authorize and direct the said City to issue through the board of liquidation of the city debt, four per cent. bonds to be known as the Constitutional Bonds of the City of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bonded debt of said City, premium bonds excepted, by the sale of said constitutional bonds and application of proceeds by the board of liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment also of certain judg-

ments against the City on floating debt claims created prior to 1879, and to authorize the purchase by said board of said outstanding bonds, other than premium bonds, or, the exchange thereof for said constitutional bonds, and for the payment of said constitutional bonds and of the aforesaid outstanding bonds, not retired under this act, and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the City of the tax of one per cent. now levied for the bond debt, and to direct the payment to and application by the board of liquidation of said taxes, to the purposes aforesaid for which it is levied, and to provide a sinking fund for said constitutional bonds; and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds, and to recognize also the exemption of said constitutional bonds from all taxation, and to define the functions and powers of said board of liquidation." The first section of that act declares that, in order to provide for the retirement of the outstanding bonded indebtedness of the City of New Orleans, and such other indebtedness as, under existing laws, is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as "premium bonds," the City of New Orleans be authorized, empowered, and directed to issue bonds to the amount of $10,000,000, described as to their form and terms. It directs that these bonds, when executed, should be delivered to the board of liquidation of the city debt to be used for the purposes aforesaid in accordance with the provisions of the act. The second section authorized and empowered the board to sell and dispose of such amounts of said constitutional bonds as might be requisite for the purposes expressed in the later section of the act, and fixed the terms and conditions on which they should be sold. The third section directed that all the funds received by the board from the sale of constitutional bonds should be immediately deposited with the fiscal agent of the City of New Orleans to the credit of a special fund called the "Bond Sales Fund,"

which said fund should be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the City of New Orleans matured or subject to be called upon, including the certificates or bonds issued under the fourth section of Act No. 54 of 1882, and including judgments then or thereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds issued under Act No. 31 of 1876, not to be retired under the act. The fourth section gave the board power, after the payment of all aforesaid outstanding bonds subject to call or matured, as provided in the third section, to purchase the unmatured outstanding bonds of the City, premium bonds always excepted, and fixed the terms and conditions under which the purchase could be made. The fifth section authorized the board to exchange bonds issued under the act for valid outstanding bonds of the City, premium bonds excepted, and fixed the manner, terms, and conditions under which the exchange could be made. The seventh section made it the duty of the council, in order to provide for the payment of the principal and interest of the constitutional bonds authorized to be issued by the act, and all other valid outstanding bonds of the City, to levy for the year 1892, and annually thereafter, until the principal and interest of the bonds authorized to be issued were fully paid, a special ad valorem tax of 1 per cent. upon all the taxable property of the City; said special tax to be a part of, and not in addition to, the tax of 20.2 mills on the dollar of value then levied for all purposes by the City of New Orleans. The eighth section directed that out of the proceeds of said 1 per cent. per annum tax, beginning in the year 1892, the board of liquidation should annually provide for the carrying of the premium bond plan, the payment of the interest upon the bonds, authorized to be issued by the act, and of the interest upon all other outstanding interest-bearing bonds of the City, and after the year 1925 for the annual sinking fund necessary to call and retire the number of bonds provided for in section 9

of the act. It further directed that, after making in each year the provisions above required, and after deducting the expenses incurred by said board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus should be passed to the credit of a special fund to be known as the "Permanent Public Improvement Fund," to be disposed of as disposed of later in the act; and the other half of said surplus should be paid over to the school board of the city, in addition to any other fund appropriated by the said city out of other funds, to be used in the maintenance and support of the public schools in said city. The tenth section directed that "the permanent public improvement fund" should be used exclusively for the purpose of the construction of permanent public improvements in the city, such as levees, canals, drainage stations, pavements, public buildings, public parks, and bridges, and required that all ordinances passed by the common council to be paid out of this fund should be first approved by the said board of liquidation, who should not draw any check on said fund unless they should be convinced upon proper inquiry that said ordinance covered the construction of a permanent improvement within the purview of the act. It was declared in the section that the true meaning of this clause was not to give said board any authority to say to what permanent public improvement any fund should be applied, but only to see that said funds should be applied exclusively to the construction of improvements that are permanent. In the eleventh section of the act the board of liquidation was created a body corporate with power to sue and be sued. It was declared that nothing in the act should be construed to affect or change in any manner the duties, powers, and functions of the board of liquidation under existing laws not inconsistent with it or the rights of said board to the assets and property of the City not dedicated to public use, including the uncollected taxes prior to 1879: but said duties, functions, rights, and powers were maintained and confirmed in full force. The sixteenth section declared all the substantial provisions of the act to be a contract be-

tween the State of Louisiana, the City of New Orleans, the taxpayers of said City, and each and every holder of said constitutional bonds. The eighteenth section declared that nothing in the act contained should be construed to affect or disturb in any manner the existing right to the tax now (then) levied for premium bonds, and for said outstanding bonds not retired; said tax being preserved in full force, and the payment of the allotments of premium bonds and premiums extant in the hands of holders, and of the interest and principal at maturity of all outstanding bonds that might not be retired under the act, should it continue as now (then) directed under existing laws; said tax of one per cent. being levied for premium bonds and outstanding bonds not retired, as well as for the aforesaid constitutional bonds substituted for the outstanding bonds paid, purchased, or retired by exchanges under the act. The nineteenth section declared the general provisions of the act should not take effect until the adoption of the constitutional amendment then contemplated, and repealed all laws or parts of laws contrary to or inconsistent with the act. The constitutional amendment referred to was submitted to and adopted by the people, and was as follows: "For the purpose of retiring the now existing valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the Act of the Legislature No. 58 of 1882, and to retire judgments now or hereafter rendered against the City on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, the said City of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue through the board of liquidation of the city debt bonds to be known as the Constitutional Bonds of the City of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing four per cent. per annum interest, to bear date and be in the form prescribed by the legislature. The said bonds shall be applied by the said board to the retirement of said outstanding bonds and judgments, by the sale of said constitutional bonds, and application of the proceeds of sale by

the board of liquidation, to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the legislature. For the payment of the interest and principal at maturity, of said constitutional bonds, and other outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said City, the said City is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the City, said tax to be part of and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the City of New Orleans, and the said tax shall be paid over as collected to and be applied by the board of liquidation, to the payment of the interest and principal at maturity of said constitutional bonds, and outstanding bonds not retired, and to the payment of the allotments of premium bonds and premiums extant, in the hands of holders. Said tax is hereby declared to be the contract right of the holders of all said bonds; and the exemption of said constitutional bonds from all taxation by the City of New Orleans and State of Louisiana, hereby recognized and declared, and after the payment of all the annual interest on said constitutional bonds and bonds not retired and the payment of the said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund, at such time and of such an amount as the legislature prescribes, the surplus of said one per cent. shall be disposed of by the legislature." The act passed at the present session—No. 36—entitled, "An act to carry into effect the constitutional amendment passed at the present session relative to the bond debt of the City of New Orleans," etc., "be and is hereby approved and confirmed in all its parts as a contract between the City of New Orleans and the holders of said constitutional bonds, premium bonds and of the bonds outstanding not retired as aforesaid. The City of New Orleans is

hereby authorized and empowered to examine into and assume the payment of the claims and obligations of the board of school directors for the City and parish of Orleans due for the years 1880, 1881, 1882, 1883 and 1884, now on the hands of original owners, who have in nowise parted with their right of ownership, or pledged the same, as may be found to be equitably due by said board for services rendered, labor performed or materials furnished, by authority of said board." In 1896, by Act No. 114, the general assembly created a drainage commission for the City of New Orleans. It gave the commission full power to control and execute the drainage of the City, authorizing it to proceed to execute and carry out substantially the plan for such drainage adopted by the council of said City by Ordinance 10,091, C. S., approved July 10, 1895, so far as it might find said plan desirable and practicable, with the right, however, to modify the same as in its judgment circumstances might require. All work done, or supplies and materials ordered by the commission, were directed to be let out to the lowest bidder. In order to raise funds for the purpose of doing the work speedily and on an extensive scale, the commission was given power to issue and dispose of its negotiable bonds, bearing interest at a rate not exceeding 5 per cent. per annum, payable semi-annually, to be sold by the commission at not less than par. That portion of the funds in the hands of the board of liquidation under the provisions of sections 6 and 10 of Act No. 110 of 1890, accruing to public works, etc., from January, 1898, was dedicated and applied for the purposes of the act, and all moneys and funds at the time of the passage of the act, under the control of the City of New Orleans, and afterwards to be received, arising from the sale of street railroad franchises, or other franchises, were also dedicated and applied to the purposes of the act. All moneys and funds dedicated and applied for the purposes of the act were declared to be consecrated to the payment of the principal and interest on said bonds. It was declared that all the provisions of the act respecting the dedication and application of funds and money,

constituted a contract with the holder or holders of bonds issued, the obligation of which contract should not be impaired. In 1898, by Act No. 63, the general assembly amended and re-enacted Sections 6, 7 and 8 of Act No. 114 of 1896, creating the drainage commission. Under the amendment to Section 6, the amount of bonds which the drainage commission had been authorized to issue was reduced from $5,000,000 to $1,500,000. In the same amending section it was declared that all moneys and funds dedicated and applied by the act to the purposes thereof were primarily consecrated to the payment of the interest on said bonds, and the redemption of the principal thereof, as provided in the act, but any surplus of said funds inuring to said commission from taxes of 1899, 1900, 1901 and 1902, and from other sources prior to January 1, 1893, not required to pay current interest on said bonds, might be used for the general purposes of said commission. The commission, after the year 1920, was given the right, and it was made its duty, to call in and pay not exceeding $200,000 of said bonds in each year, and in the order of their issue, beginwith No. 1. By the seventh section of the act, its provisions respecting the dedication and application of funds and moneys were declared to constitute a contract primarily with the holders of said bonds as aforesaid to the extent as aforesaid, and also with each and every person or corpotion that may have entered into contracts, with the said commission; and it was further declared that the obligation of said contract as to dedication and application of funds and moneys should not be impaired as might be enforced by any holder of said bonds, or by any contract creditor of said commission by mandamus and injunction, or by other proceedings in court.

In 1886 this Court was called upon in Labatt vs. City of New Orleans, 38 La. An. 284, to pass upon the right of the plaintiff therein, declaring on certificates issued by the board of directors of the public schools of the City of New Orleans during the years 1874, 1875, and 1876, to recover judgment thereon against the City of New Orleans; the ulterior object being to obtain there-

for bonds of said City to be issued under the provisions of Act No. 67 of the Legislature of 1884, which was amendatory of Act No. 133 of 1880, passed for the purpose of liquidating the indebtedness of the City of New Orleans. The court in its opinion stated that the main contention hinged upon the question as to whether such certificates evidenced or not an indebtedness of the City of New Orleans; that plaintiff's argument was that those certificates constituted a part of the indebtedness of the City of New Orleans, but that, if when issued they were not debts of the City, they had acquired that character under a correct construction of Article 254 of the Constitution of 1879 and of Section 3 of Act No. 74 of 1880, which proposed to enforce the provisions of Article 254 of the Constitution. After an examination of the certificates, the court was of the opinion that they were not evidences of debt against the City, and their holders had no right to obtain judgment against the City, with a view to have the same converted into bonds under the provisions of Act No. 67 of 1884; that that portion of Act No. 74 of 1880 which placed the unpaid salaries of school teachers subsequent to 1872 and prior to January 1, 1880, on the same footing with the valid indebtedness of the City of New Orleans, and authorized bonds might be issued to take up school board certificates which had been issued for the same, was unconstitutional, and therefore void. Referring to plaintiff's argument, that this act was authorized by Article 254 of the Constitution, reading, "that the general assembly * * * shall enact such laws as may be proper to liquidate the indebtedness of the City of New Orleans and apply its assets to the satisfaction thereof," the court said: "It can scarcely be argued that by this language the convention could be construed to have meant that the legislature could provide for the liquidation of claims which were not part of the indebtedness of the City of New Orleans, or that such language could possibly be strained to mean that the legislature was therefore vested with the power to coerce the City of New Orleans into the settlement of school certificates which had issued without her

authority or consent, by an irresponsible board or corporation, for or without valuable consideration, and perhaps in direct violation of the very law whence such board could derive its only legitimate authority. The language of the Constitution can authorize no such deductions, and its proper construction would at once strike with nullity any attempt of the legislature to fasten on the City of New Orleans the obligation to settle or liquidate any claims which are not legally and unequivocally included in the term 'indebtedness.' The very letter and the undoubted spirit of the constitution are most obviously adverse to any such proposed legislation. They go to the extent of forbidding such action even with the consent of the corporation." In 1888 the general assembly in Act No. 81 of that year provided that the city council of New Orleans, in making their annual budget of expenditures, should include therein the amount deemed necessary to meet the expenses of the schools, and keep in good repair school houses and grounds as may seem reasonable and just, provided it should not exceed the statement of the school board to be previously made, and shall not be less than $250,000, whereof $75,000 is to be paid out of the reserve fund of 20 per cent. contributed by Section 66 of Act No. 20 of 1882, and Act No. 109 of 1886, from which certain claims against the board shall be gradually paid so as to be extinguished in 1896. The act authorized the board, if necessary, to enforce its provisions by mandamus. The City having refused to make appropriations as directed, the board sought, by judicial proceedings, to force it to do so through mandamus. State vs. City of New Orleans, 42 La. An. 94, 7 South. 674. The City defended upon the ground that the general assembly was attempting to amend its charter in a prohibited manner, and, requiring it to pay through the board of directors a debt which it did not owe, the district court refused the mandamus, and the supreme court on appeal affirmed the judgment. In the course of its opinion this court said: "It is elementary that a State, in the absence of constitutional prohibition, may delegate part of her political and administrative powers to

municipal corporations within her borders, which then become State functionaries; and that, whenever such delegation may take place, the State can confer on them certain rights, which she may subsequently extend, abridge, or withdraw, as may seem just and advisable, but without impairing the obligation of contracts. This privilege of delegation is essential in the very nature of things, as otherwise the local administration necessary for public good would be an impossibility in consequence of the practical inability of the State general government to well provide by itself for the regulation of administrative matters on numerous important details in the different parts of the State. The organic law may, however, check the incidental rights of the legislature, so that, when constitutional restrictions have been imposed, the limitation is paramount, and the legislature is impotent. Indeed, it is a question settled beyond the possibility of reasonable doubt, and which needs no reference to authorities to be verified, that the supremacy of the legislature over a municipal corporation, in many respects, is restrainable by qualifications placed by the Constitution in terms, or by fair implication. It is clear that the legislature can no more transgress a State Constitution than a convention can violate the federal Constitution, or than a municipal corporation can override its charter, valid laws affecting it and the federal or State Constitution. * * Although, under an express constitutional provision, the legislature has authority to cancel its charter and remit its inhabitants to another form of government (Article 254), that body has no right to compel its representatives by whatever name, under its actual or under an eventual form of government, to do that which parochial or municipal corporations cannot be forced to do. So that if, by the terms of the Constitution or fair implication from them, it appears that the legislature has no right to compel a municipal corporation to do that which the Constitution says the legislature may authorize it to do, and if the legislature undertakes to go beyond its power of authorization, its action is nugatory."

In State vs. Police Jury, 47 La. An. 1244, 17 South. 792,

we had occasion to examine into this same question as to the power of control of the general assembly over the powers of taxation, the actions, and the funds of a municipal corporation, in view of constitutional restrictions and limitations, and reached the same conclusions which had been reached in 42 La. An. 94, 7 South. 674, by our predecessors. Under the principles announced in the cases cited, the unpaid salaries of school teachers in the public schools of the City of New Orleans for the years 1880, 1881, 1882, 1883, and 1884, were not debts of the City of New Orleans at their origin, and could not be made so by mere legislative authority. Their status in this respect remained unchanged up to the amendment to the constitution of 1879, adopted by the people of the State, which authorized and empowered, but did not compel, the City of New Orleans to examine into and assume the payment of the claims of teachers for these particular years. The vote of the people of New Orleans on the adoption of that amendment was 34,366 votes for and 599 votes against the same. The effect of the adoption of that amendment was not to constitute those claims ipso facto debts of the City. The City only became committed to payment of the same by its subsequent voluntary act. The amendment designated no time or method or means for the payment of these claims, if and when assumed. The indebtedness of the City covered by Act No. 110 of 1890, which the amendment "recognized and confirmed in all its parts," for the funding and payment of which the legislature was therein providing through bonds not to exceed $10,000,000 in amount, was the then existing "valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the Act No. 58 of 1882, and judgments then rendered or thereafter to be rendered against the City on floating-debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884." The funding or payment of the unpaid salaries for the years 1880, 1881, 1882, 1883, and 1884, of public school teachers, was evidently not contemplated by this act. The debts to be funded, and for which provision for payment

through bonds was therein made, were specifically enumerated, and the taxes authorized and directed to be levied by the act were dedicated and devoted especially and primarily to the satisfaction of those particular debts as under a contract obligation. The surplus of the 1 per cent. tax referred to in the act was the surplus "after the payment of all the interest on said constitutional bonds and bonds not retired, and the payment of the annual allotments of the premium bonds, and premiums extant in the hands of holders, and after making provision for a sinking fund at such time and of such amount as the legislature prescribed. This surplus was authorized to be disposed of by the legislature. The legislature disposed of it in the eighth section of Act No. 110 of 1890. After declaring in what way the 1 per cent. tax should each year be primarily disposed of, the general assembly used the following language: "After making in each year the provision above required, and after deducting the expenses incurred by said board, and after paying any deficiencies in the interest fund of any previous years, one-half of the surplus should be passed to the credit of a special fund, to be disposed of as disposed of later in the act, and the other half of said surplus should be paid over to the school board of the City in addition to any other funds appropriated by said City out of other funds to be used in the maintenance and support of the public schools in said City." The disposition of the permanent improvement fund, which the eighth section declared was to be made "later in the act," was made in its tenth section. The general assembly had, as we have seen, by its Act No. 114 of 1896, given special direction as to the permanent improvement fund, ordering it to be used for city drainage. It had organized a drainage commission to take charge of that subject, and, for the purpose of raising funds for the purpose of doing the work speedily and on an extensive scale, had given power to the commission to issue and dispose of its negotiable notes to an amount of $5,000,000, and that portion of the funds in the hands of the board of liquidation accruing to public works, un-

der Sections 6 and 10 of Act No. 110 of 1890, had been by it dedicated and appropriated as under a contract obligation for the payment of these bonds. The drainage commission duly organized, and at the time of the adoption of the Constitution it had created obligations to a large amount, payable out of the surplus. We do not understand it to be claimed that the holders of claims for unpaid salaries for the years 1880, 1881, 1882, 1883 and 1884, of teachers in the public schools of New Orleans, were entitled to have their claims funded or paid under the Act of 1890, but that their pretensions rest exclusively upon the effective force of Articles 315, 316 and 317 of the Constitution 1898, which effective force the defendants question. In discussing this matter, we have to deal, not with the powers of the legislature, but of those of a convention not only over corporations and corporate acts, but over the legislatures and legislative acts.

In State vs. Mayor, etc., of City of New Orleans, 32 La. An. 714, this court said: "A constitution framed by a convention of the people, especially after having been submitted to and ratified by a vote of the people, is the ultimate expression of the will of the sovereignty itself. Its provisions may control with plenary power all private and social rights and all existing laws and institutions, and may even violate the most fundamental rule of justice, provided, only, they do not conflict with the provisions of the Constitution of the United States, which, with regard to the subjects controlled by them, and to those alone, form the paramount law of the land. No court has the right to question the validity of any provision of a State Constitution, however unwise, impolitic, or unjust it may be upon any other ground whatever than that it violates the Constitution of the United States. Cooley, Const. Lim. p. 34. It follows, therefore, that the provision of the Constitution of 1879 must have full force against all persons and against all rights except so far as its operation is restrained by the Constitution of the United States." The court said, "it was useles to discuss limitations upon the powers of the legislature imposed by the Constitution of 1868, because those

limitations had no force over the power of the convention." This last statement was made, of course, with reference to matters not controlled by the provisions of the Constitution of the United States. The application of these principles to the matters presented to us in this case confines our inquiries to a very narrow range: Are the provisions of Articles 315, 316, and 317 of the Constitution violative of any of the provisions of the Constitution of the United States? It is claimed they violate the obligations of contracts, and therefore should not be enforced.

The first point to which we direct our attention is as to the power and extent of the power of the convention over the subject of the drainage of the City of New Orleans, or of matters falling under the term "permanent public improvement." Was there anything in the situation of affairs when the convention met which had conferred upon New Orleans, as a city, an absolute vested right to determine for itself for the future, free from all legislative or constitutional control, the extent to which permanent improvements should be made within its limits,—the selection of the objects of permanent improvement or the amounts to be expended for that purpose? Unquestionably not. The convention would have had the right to have ordered the City, as such, to have desisted from improvements of a particular kind, either permanently or for a limited time, with the privilege of continuing later on, or to alter the character or kind of improvements, or the amount which should be expended for the same. The corporation would in vain urge that the course pursued was detrimental to its interests; that it would be checked in its progress; that the public health would be impaired. It would be forced to yield to a superior power legally controlling these matters, however disadvantageously the power might be exercised. Neither the City nor the drainage commission could legally object that the extent or scope of the system of permanent improvement would be restricted by the withdrawal or funds needed to make that system complete or successful. The work could have been stopped at any time, though the

rights of contract creditors as they existed at the date of the action of the convention could not have been by it impaired. Our examination on this branch of the case as to the effect of enforcing Articles 315, 316, and 317 of the Constitution will go no further than to see whether contract creditors having rights upon the permanent improvement fund would be impaired or not. Defendants assume that the mere fact that constitutional bonds should be sold for the purpose of paying the certificates held by relators, or should be given in exchange for those certificates, would of necessity entitle the holders of such bonds to prime the holders of permanent improvement bonds—bonds drawn against the surplus of the one per cent. tax—dedicated to permanent public improvements, and also to necessarily come in on a footing of equality with all the other holders of consolidated bonds, and they maintain, if this be true, the rights of contract creditors under the funding act would be impaired.

Relators, on the other hand, insist that the only portion of the 1 per cent. tax ever set aside for permanent public improvements was one-half of the surplus produced by the tax which would remain after having retained in the hands of the board of liquidation enough to meet the payment in full of a $10,000,000 issue of consolidated bonds, and that, therefore, it would be legally immaterial to creditors basing contracts on such surplus to whom the other portion of the fund would go. It would be enough for them to know it would not go to them, and relators urge that other holders of consolidated bonds would have no ground of complaint; that they should be permitted to share equally with them from the tax fund, as they had accepted their bonds on the expected basis of coming in concurrence with an issue of ten millions of bonds. That they might be interested that the limit as to the amount of the bonds should not be passed, but they were without legal interest, when the limit should not have been passed as to who should be the holders of the bonds sharing the fund with them. In support of this last position, they rely upon the decision of the Supreme Court of the United States in Board vs.

McComb, 92 U. S. 531. If the collection of the 1 per cent. tax would suffice to pay each year the holders of consolidated bonds issued in taking up or retiring the bonds and claims such as were provided for by Act No. 110 of 1890 and the constitutional amendment of 1892, without any conflict with the bonds ordered to be sold by Article 317 of the Constitution of 1898, the former, of course, would have no cause of complaint; but if, from any cause, the amount of the tax collected would be insufficient for that purpose, we do not think the holders of these latter bonds could force the former to prorate with them the amount in hand. This condition of things is not existing. It may never arise, and should it arise, the Board of Liquidation would doubtless have taken steps to distinguish bonds issued under Article 317 from those which had been otherwise issued. It does not necessarily follow that all claims payable out of a particular tax should stand on a footing of perfect equality as to payment. If, from any legally existing cause, there would be priority of right, there would be priority of payment. We have an example of this in the matter of the priority or preference payment of the salaries of the constitutional officers of the State over warrants for ordinary claims, though all are payable out of the general fund (State vs. Burke, 32 La. An. 1213), and it has been held that amounts needed for the alimony of the City have to be paid out before those for other purposes are paid. Moore vs. City of New Orleans, 32 La. An. 729; Saloy vs. City of New Orleans, 33 La. An. 79. So, also, it sometimes happens, from special circumstances, that the holder of one or more of the same series of notes may hold rights subordinated to those of the holders of the others. If there should be, in the future, any actual conflict of interests, the Board of Liquidation and the parties interested will doubtless have taken steps to be able to protect themselves. We do not take the same view that relators do as to what was meant by, and intended to be conveyed by, the surplus referred to by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. We

think the law makers intended that any portion of the 1 per cent. tax provided for in Act No. 110, not needed for the payment or retirement of the particular bonds or claims therein specially provided for as to payment or retirement, should constitute the surplus of the tax, and that it was not contemplated when these laws were passed, or the amendment of 1892 adopted, that, in order to exhaust any portion of the $10,000,000 originally expected to be needed to pay the existing bonds and the existing claims therein especially enumerated, which might not be necessary for that purpose, new classes of claims should or would be thrown under the provisions of the original funding law. We think the surplus was intended to connect at once and follow immediately behind as to its appropriation the amount beyond that actually needed to carry out the plan as originally mapped out and planned. The surplus was provisionally ascertained each year in a manner particularly specified, to be readjusted the next in a manner also particularly specified. All the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be only any surplus over $10,000,000 which might result from the collection of the 1 per cent. tax. We think the board of liquidation, the drainage commissioners, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The convention, while ordering the payment of the certificates held by the relators through sales of consolidated bonds, could not confer upon the holders of such bonds rights which in any way would come im competition with the contract rights of creditors existing against the tax at the time of the adoption of the Constitution. Though there was no mention in the Constitution as to the rank of the bonds which would be issued to take up relators' certificates, that rank resulted from legally existing conditions which could not be constitutionally interfered with. There is no constitutional objection to the convention ordering the Board

of Liquidation to sell bonds to take up the relators' certificates, but there would be constitutional objection to be urged if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. Duperier vs. Police Jury, 31 La. An. 710; Shields vs. Pipes, 31 La. An. 765. The consolidated bonds which relators seek to have issued upon their prayer will really be drawn against (when issued) any surplus which will remain of the 1 per cent. tax after the payment of all the bonds issued and to be issued by the board of liquidation, under Act No. 110 of 1890 and the Constitutional Amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated, and also the bonds issued and to be issued by the drainage commission, under the provision and authority of Act No. 114 of 1896, to pay the contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent improvement fund by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. The effect of this will be to subordinate the rights of holders of bonds issued by the drainage commission to pay for contracts entered into after the adoption of the Constitution of 1898 to those of the holders of consolidated bonds to be issued under the orders of Article 317 of the Constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control.

For the reasons assigned, it is hereby ordered, adjudged, and decreed that the judgment of the district court be, and the same is hereby, affirmed, except as to the interest allowed, which interest is hereby reduced from 5 to 4 per cent.; costs of appeal to be borne by appellees.

MONROE, J., takes no part, as he was not a member of the court when the case was submitted.

No. 110.] JOINT RESOLUTIONS

Proposing an amendment to the Constitution providing for the funding of the bonded debt of the City of New Orleans, other than premium bonds, into 4 per cent. bonds, providing a special tax of 1 per cent. to pay the bonded debt of the City, and exempting the said 4 per cent. bonds from taxation, and further authorizing the said City to assume and pay such unpaid claims to the Board of School Directors of said City and Parish which it may find to be equitably due by said board.

Sec. 1. Be it resolved by the Senate and House of Representatives of the State of Louisiana, two-thirds of all the members elected to each house concurring, That the following amendments to the Constitution of the State be submitted to the electors of the State at the next election for Representatives for the General Assembly in the year 1892, for the purpose of retiring the now existing valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the Act of the Legislature, No. 58 of 1882, and to retire judgments now or hereafter rendered against the City on floating debt claims prior to 1879, entitled to be funded under Act 67 of 1884, the said City of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue through the Board of Liquidation of the City Debt, bonds to be known as the Constitutional Bonds of the City of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing 4 per cent. per annum interest, to bear date and be in the form prescribed by the Legislature. The said bonds shall be applied by the said board to the retirement of said outstanding bonds and judgments, by the sale of said Constitutional Bonds and application of the said proceeds of sale by the Board of Liquidation, to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the Legislature. For the payment of the interest and principal at maturity, of said constitutional bonds, and other outstanding bonds not retired under this

amendment, and for the payment of the annual allotments and premiums of the premium bonds of said City, the said City is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the City, said tax to be part of, and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the City of New Orleans, and the said tax shall be paid over as collected to, and be applied by, the Board of Liquidation, to the payment of the interest and principal at maturity of said Constitutional Bonds, and outstanding bonds not retired, and to the payment of the allotments of premium bonds and premiums extant in the hands of the holders.

Said tax is hereby declared to be the contract right of the holders of all said bonds, and the exemption of said Constitutional Bonds from all taxation by the City of New Orleans, and State of Louisiana, is hereby recognized and declared, and after the payment of all the annual interest on said Constitutional Bonds and bonds not retired, and the payment of the said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund, at such time and of such an amount as the Legislature prescribes, the surplus of said one per cent. shall be disposed of as prescribed by the Legislature.

The act passed at the present session, No. 36, entitled, "An act to carry into effect the Constitutional Amendment passed at the present session relative to the bond debt of the City of New Orleans," etc., be and is hereby approved and confirmed in all its parts as a contract between the City of New Orleans and the holders of the aforesaid Constitutional Bonds, premium bonds and of the bonds outstanding not retired as aforesaid.

Sec. 2. Be it further resolved, etc., That the City of New Orleans be and is hereby authorized and empowered to examine into and assume the payment of the claims or obligations of the Board of School Directors for the City and Parish of Orleans due for the years 1880,

1881, 1882, 1883, and 1884, now in the hands of original owners, who have in nowise parted with their right of ownership or pledged the same, as may be found to be equitably due by said board for services rendered, labor performed or materials furnished by authority of said board.

Sec. 3. Be it further resolved, etc., That all electors voting at said election for said amendment shall place upon their ballots the words, "For the City of New Orleans debt amendment;" and all electors voting at said election against said amendment shall place on their ballots, "Against the City of New Orleans debt amendment."

AN ACT

To carry into effect the Constitutional Amendment passed at the present session of the Legislature, relative to the bond debt of the City of New Orleans, and to authorize and direct the said City to issue through the Board of Liquidation of the city debt, 4 per cent. bonds to be known as the Constitutional Bonds of the City of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bond debt of said City, premium bonds excepted, by the sale of said Constitutional Bonds and application of proceeds by the Board of Liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment also of certain judgments against the City on floating debt claims created prior to 1879, and to authorize the purchase by said board, of said outstanding bonds, other than premium bonds, or the exchange thereof for said Constitutional Bonds, and for the payment of said Constitutional Bonds, and of the aforesaid outstanding bonds, not retired under this act, and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the City of the tax of 1 per cent. now levied for the bond debt, and to direct the payment to and application by the Board of Liquidation of said taxes, to the purposes aforesaid for which it is levied, and

to provide a sinking fund for said Constitutional Bonds; and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds, and to recognize also the exemption of said Constitutional Bonds from all taxation, and to define the functions and powers of said Board of Liquidation.

Whereas, Due notice of intention to apply for the passage of this act having been advertised, as required by Article 48 of the Constitution:

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That, in order to provide for the retirement of the outstanding bond indebtedness of the City of New Orleans, and such other indebtedness as under existing laws, is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as premium bonds, the City of New Orleans is authorized, empowered, and directed to issue bonds to the amount of ten million of dollars: nine thousand of which bonds shall be for one thousand dollars each, and two thousand of which shall be for five hundred dollars each, to be known as the "Constitutional Bonds of the City of New Orleans," dated July 1st, 1892, payable fifty years after date, with the right to call by lot not more than seven hundred thousand dollars per annum after the year 1925, bearing four per cent. per annum interest, payable semi-annually and represented by interest coupons attached thereto.

Said bonds shall be numbered, those of one thousand from one to nine thousand, and those of ($500) five hundred each from one to two thousand (2000), and shall be signed by the Mayor and Comptroller of the City of New Orleans, and delivered to the Board of Liquidation of the City Debt, to be used for the purposes aforesaid in accordance with the provisions of this act.

Each of said bonds shall, at the time of its issuance by the said Board of Liquidation and not at any time anterior thereto, be countersigned by the president and secretary

of said board; and a daily report shall be made to the Mayor by said secretary of the number of the bonds so countersigned and delivered, and the purpose for which they were issued.

These daily reports shall be laid before the City Council by the Mayor; and the finance committee of said council is required to examine and verify said reports at least once a month, and to report the results of their examination and verification to the council.

Sec. 2. Be it further enacted, etc., That the Board of Liquidation is hereby authorized and empowered to sell and dispose of such amounts of said Constitutional Bonds as may be deemed requisite for the purposes hereinafter expressed, the sales of bonds to be made on sealed proposals or bids to purchase to be invited by advertisements published at least five times during the period of thirty days, in one or more newspapers in the City of New Orleans and the City of New York, and no sale to be made before said delay and advertisement, the bonds to be sold to the highest bidder if the bid is deemed acceptable, but the board is to have the right to reject all bids, the bonds to be sold at the highest premium obtainable, and no sale shall be made at less than par.

Said advertisements shall provide that all accepted sales shall be consummated by the payment of the price bid, and the delivery of the bonds purchased at least three days before the date of the maturity or the call date of the bonds that are proposed to be purchased with the funds derived from the sales; where bonds are sold to pay judgments, as hereinafter provided, the advertisements shall provide for the payment of the price, and the delivery of the bonds on a fixed day, and all past due interest coupons on the bonds sold shall be cut off and cancelled before delivery to the purchasers, and provided no sale of said constitutional bonds shall be made more than thirty days in advance of the period when the funds are needed for the payment or purchase of bonds.

Sec. 3. Be it further enacted, etc., that all funds received by the Board of Liquidation from the sale of Constitu-

tional Bonds, shall be immediately deposited with the fiscal agent of the City of New Orleans, or if the fiscal agent is not satisfactory in the opinion of the Board, with a chartered depositary selected by the Board, to the credit of a special fund called the "Bond Sales Fund," which said fund shall be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the City of New Orleans matured or subject to be called, including the certificates or bonds issued under the fourth section of the Act No. 58 of 1882, and including judgments now or hereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds issued under the Act No. 31 of 1876, not to be retired under this act, and the interest upon all said bonds subject to call, shall cease after publication of the call, as now provided by existing laws; no check shall be honored on said fund unless accompanied by a certificate signed by the president and secretary of said board, describing the bonds it is intended to retire, and certifying that said bonds have been surrendered to said board and cancelled, or describing the judgments to be paid and annexing a certificate of its satisfaction.

Sec. 4. Be it further enacted, etc., That after the payment of all aforesaid outstanding bonds subject to call or matured, as provided in section 3 of this act, the Board of Liquidation with the fund derived from the sale of Constitutional bonds, shall have the power to purchase the unmatured outstanding bonds of the City, premium bonds always excepted, and to this end, the board by advertisement published once a week in one or more newspapers in the City of New Orleans and the City of New York for the space of thirty days, shall invite sealed proposals from the holders to sell said outstanding bonds, and the board is authorized if deemed judicious to purchase said outstanding bonds at the lowest price named in the proposals, but it is to be under no obligation to accept, but may in its discretion reject any and all proposals; no purchase of outstanding bonds shall ever be made with-

out the assent of the City Council, and in case of said purchase, the check for the purchase price of the bonds shall be accompanied by a certificate signed by the president and secretary of said board, describing the bonds purchased and certifying that the bonds have been surrendered and cancelled, and provided further, that no purchase of said outstanding bonds shall be made at any price higher than the face of the bond with accrued interest.

Sec. 5. Be it further enacted, etc., That after the payment of all the aforesaid outstanding bonds, subject to call or matured, as provided in Sec. 3 of this act, the board is hereby authorized and empowered to exchange for the valid outstanding bonds of the City of New Orleans, save and except premium bonds, such an amount of the Constitutional Bonds as may be requisite for the purpose of said exchange, said exchange of the Constitutional Bonds issued under this act for said bonds surrendered in exchange to be made on the terms and conditions as follows: The board, by advertisement inserted in one or more newspapers in the City of New Orleans and City of New York, to be published three or four times for and during the space of thirty days, shall invite proposals to exchange said outstanding bonds for the Constitutional Bonds authorized by this act; the board shall be under no obligation whatever to accept any bid or proposal, but in its discretion is hereby authorized and empowered only if it sees fit to exchange said Constitutional Bonds at the lowest price or rates of exchange specified in the said bid or proposals for said bonds surrendered in exchange; provided, however, the board shall use its best efforts to secure as high a premium as possible for the said Constitutional Bonds, and in no case shall said Constitutional Bonds be exchanged at any rate less than the par thereof, and provided further, that no exchange shall be made for the said bonds surrendered and exchanged at any rate higher than their par with accrued interest, and provided further, that a proces verbal shall be prepared and put on file by the board of the numbers and amounts of the bonds surrendered in exchange and at the rate at which they were surrendered and of the numbers and amounts of the

Constitutional Bonds issued in exchange, and the rate at which they were issued, stating also the date of the exchange, and provided further, that no exchange shall ever be made without the previous assent of the City Council.

Sec. 6. Be it further enacted, etc., That all bonds retired under provisions of this act shall be immediately cancelled by perforating the same and the attached coupons; and such cancelled bonds and coupons shall not be destroyed, but shall be kept by said board as vouchers, and shall be pasted in the bond books, in accordance with the system, and for many years past in vogue in the conduct of the business by said board.

The same method shall be pursued with reference to all bonds and coupons retired with the sinking fund herein provided, and all coupons paid year by year.

Sec. 7. Be it further enacted, etc., That in order to provide for the payment of the principal and interest of the Constitutional Bonds, herein authorized to be issued, and of all other outstanding valid bonds of the City of New Orleans, it shall be the duty of the council and the proper officers of the City of New Orleans to levy, for the year 1892, and annually thereafter, until the principal and interest of the bonds, herein provided to be issued, are fully paid, a special ad valorem tax of one per cent. upon all the taxable property, real, personal and mixed, in the City of New Orleans; said special tax to be a part of and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the City of New Orleans. The proceeds of said special tax shall be paid over to the fiscal agent or depository of the Board of Liquidation, to the credit of said board, day by day, as the same is collected by the proper officials of said City; and neither the said City, nor its officers, shall have the custody, control, disposition or expenditure of said tax, or any part thereof, except as herein provided. In case the said City, at any time, shall fail or neglect to levy and collect said special tax, or in case the municipal government of the City should be abolished, or in case present territory of the City of New Orleans should be

transferred to other municipal corporations, and no proper and efficient provision is made by law to compel those municipal governments to levy and collect said special annual tax of one per cent.; or, in case said municipal corporations refuse or neglect to exercise to this end a proper and efficient taxing power bestowed upon them, then, in any of these events, the said Board of Liquidation shall itself, by proper resolution, have power to levy said tax, and to collect the same; and, in said levy and collection, to use any and all the machinery, rights, powers and authority established by the State for the levy and collection of the State taxes; and in case it should become necessary under the abovementioned or similar circumstances, for the said Board of Liquidation to levy and collect said tax, and said board should refuse or neglect to do so, any court of competent jurisdiction shall, on application of any bondholder, have power to decree the levy of said special tax throughout the said territory, and to have the same collected by the sheriff, or executive officer of the court, and the proceeds applied to the payment of the interest and principal of the said bonds. In case any such decree is entered, the sheriff or executive officer of the court shall have all the powers, rights and authority granted by law by the State to her own tax collectors.

Sec. 8. Be it further enacted, etc., that out of the proceeds of said one per cent. per annum tax, beginning in the year 1892, the said Board of Liquidation shall annually provide for the carrying on of the premium bond plan, the payment of the interest upon the bonds herein authorized to be issued, and of the interest upon all other outstanding interest bearing bonds of the City of New Orleans, and after the year 1925, for the annual sinking fund necessary to call and retire the number of bonds provided for in section 9 of this act. After making, in each year, the provisions above required, and after deducting the expenses incurred by the said board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the "Per-

manent Public Improvement Fund," to be disposed of as hereinafter provided; the other half of said surplus shall be paid over to the School Board of the City of New Orleans, in addition to any fund appropriated by said City out of other funds, to be used in the maintenance and support of the public schools in said City.

Sec. 9. Be it further enacted, etc., That, commencing with the year 1926, five hundred thousand dollars of Constitutional Bonds shall be annually called and retired by said board in the manner herein provided, with funds derived from the proceeds of said tax of one per cent.; and commencing with the year 1937, seven hundred thousand dollars of said Constitutional Bonds shall be annually called and retired, in the manner herein provided, with said funds. In order to determine each year what bonds shall be called and retired, the number of all outstanding bonds shall be placed in a wheel on the first Monday of July of each year, commencing with the year 1926, and five hundred numbers, or seven hundred numbers, as the case may be, shall be drawn out, two numbers of the five hundred dollar bonds counting as one. The numbers of the bonds so drawn shall be published in New York and New Orleans for thirty days, together with a notice that said bonds must be presented for payment on the ensuing first of January; and after that date all interest will stop on said bonds. All bonds so paid shall be cancelled as soon as delivered to said board in the manner specified in section 6 of this act, and detailed report thereof made by the secretary of the board to the Mayor, who shall lay the same before the council for examination and verification by the Finance Committee thereof.

Sec. 10. Be it further enacted etc., That the "Permanent Public Improvement Fund," above provided for, shall be used exclusively for the construction of permanent public improvements in the City of New Orleans, such as levees, canals, drainage stations, pavements, public buildings, public parks, and bridges, and all ordinances passed by the City Council to be paid out of this fund, shall first be approved by the said Board of Liquidation, who shall

not draw any check on said fund, unless they are convinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement, within the purview of this act. The true interest and meaning of this clause is not to give said board any authority to say to what permanent public improvement any fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent.

Sec. 11. Be it further enacted, etc., That the Board of Liquidation of the City Debt, established by Act No. 133, of the Acts of 1880, as now constituted, is hereby created a a body corporate, with right of existence and succession until January 1st, 1943, with power to sue and be sued, to have a corporate seal, to make reasonable rules and regulations for the conduct of its business, and to employ counsel and a reasonable clerical force. None of its members shall receive any compensation for his services. One of its members shall be elected President, and another Vice President, who shall act in the absence or disability of the President. They shall select a Secretary (not a member of the board), who shall give bond for the faithful performance of his duties in the sum of twenty thousand dollars ($20,000), and this bond shall be renewed every three years. He shall receive a salary, to be fixed by the board, not to exceed thirty-five hundred dollars ($3500) per annum, and shall hold his office at the pleasure of the board. Their funds shall be deposited with the fiscal agent of the City of New Orleans, or with some chartered bank in the City of New Orleans selected by the board. The City of New Orleans shall provide, in the City Hall or elsewhere, proper offices and quarters for said board, and its officers, books, records and archives. The clerical office expenses, counsel fees, and the cost of all printing and engraving bonds under this act shall be paid from said tax fund. On the first of January and July of each year, said board shall make, in printed form, to the City Council, a detailed report of all its receipts and all its expenditures, and of its transactions and doings under the provisions of this act, with the names

of all its employees, and the amount of compensation paid to each. Nothing in this act contained shall be construed to affect or change in any manner the duties, powers and functions of the Board of Liquidation under existing laws, not inconsistent with this act, or the rights of said board to the assets and property of the City not dedicated to public use, including the uncollected taxes prior to 1879; but said duties, functions, rights and powers are maintained and confirmed in full force.

Sec. 12. Be it further enacted, etc., That any member of said Board of Liquidation who removes his domicile from the City of New Orleans, or who is convicted of any crime against the State, or who is declared insolvent or bankrupt, or who becomes incapacitated to perform his duties, shall forfeit his membership, and it shall be the duty of said board to declare his membership vacant, and to elect his successor. Any member may be removed by a two-third vote of the whole board, for misfeasance, malfeasance in office, or for neglect of his duties as a member; or he may be removed on similar grounds by any court of competent jurisdiction at the suit of any bondholder, or ten taxpayers.

Sec. 13. Be it further enacted, etc., That in case all, or the majority of the members of said board, should, for any reason become vacant, so as to prevent a quorum of said board, any court of competent jurisdiction shall have power and authority, on the application of holders of at least ten thousand dollars ($10,000) of said Constitutional Bonds, to be had contradictorily with the City of New Orleans and the surviving members of the board, if there be any, to fill enough of said vacancies to constitute a quorum, and the quorum so obtained shall fill the remainder of the vacancies.

Sec. 14. Be it further enacted, etc., That said board shall have power, with the concurrence of the City Council, to make and publish reasonable and proper rules for the registry of the bonds to be issued under this act.

Sec. 15. Be it further enacted, etc., That said Constitutional Bonds shall be exempt from all taxation, State, parish and municipal.

Sec. 16. Be it further enacted, etc., That all of the substantial provisions of this act are hereby declared to be a contract between the State of Louisiana, the City of New Orleans, the taxpayers of said City and each and every holder of said Constitutional bonds.

Sec. 17. Be it further enacted, etc., That the Board of Liquidation shall immediately cease extending outstanding bonds under the Act No. 58 of 1882.

Sec. 18. Be it further enacted, etc., That nothing in this act contained shall be construed to affect or disturb, in any manner, the existing right to the tax now levied for premium bonds and for said outstanding bonds, not retired, said tax being preserved in full force, and the payment of the allotments of premium bonds and premiums extant in the hands of holders, and of the interest and principal at maturity of all outstanding bonds that may not be retired under this act shall continue as now directed under existing laws; said tax of 1 per cent. being levied for premium bonds and outstanding bonds, not retired, as well as for the aforesaid constitutional bonds substituted for the outstanding bonds paid, purchased or retired by exchanges under this act.

Sec. 19. Be it further enacted, etc., That the general provisions of this act shall not take effect until the adoption of the aforesaid constitutional amendment; provided, however, that portion of the act prohibiting the further extension of bonds, under the Act No. 58 of 1882 shall go into effect immediately, and all the laws contrary to or inconsistent herewith be and the same are hereby repealed.

S. P. HENRY,
Speaker of the House of Representatives.

JAS. JEFFRIES,
Lieut. Governor and President of the Senate.

Approved July 8th, 1890.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original:

L. F. MASON,
Secretary of State.

No. 133.] AN ACT

To liquidate the indebtedness of the City of New Orleans, and to apply its assets to the satisfaction thereof; to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That for the purpose of liquidating, reducing, and consolidating the debt of the City of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said City is hereby created. The said syndicate shall be chosen as follows: two by the Governor of the State of Louisiana, two by the Lieutenant Governor, and two by the Speaker of the House of Representatives, and the Mayor of the City of New Orleans, the Treasurer and the Comptroller thereof, as hereinafter provided, shall be *ex-officio* members of said syndicate; provided, that in case no change is made in the present City government, the present commissioners of the same consolidated debt, shall act as *ex-officio* members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number from death, resignation or otherwise.

Sec. 2. Be it further enacted, etc., That the commissioners of the consolidated debt, or the City officers provided and named in Section one of this act, and the syndicate hereby created, shall constitute a board of liquidation of the City debt, and the said board shall have exclusive control and direction of all matters relating to the bonded debt of the City of New Orleans. The board of liquidation shall cause to be prepared bonds of the City of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as hereafter provided. The said bonds shall be signed by the Mayor and countersigned by the Administrators of Accounts and of Finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four per cent. per annum, from the date of said bonds, payable semi-an-

nually, on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the Board of Liquidation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payable, interest and principal, in lawful money of the United States; and the said Board of Liquidation shall be, and is hereby, empowered and authorized to establish in New York, London, Paris and Amsterdam, such agencies as they may see fit and desirable.

Sec. 3. Be it further enacted, etc., That the Board of Liquidation of the City debt be, and it is hereby, authorized and empowered to retire and cancel the entire valid debt of the City of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to the purchase of such old obligations, or by exchange of the new bonds against said old obligations, on such terms as may be agreed upon between the holders of the said old obligations and the Board of Liquidation; provided, the new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar, and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligations with interest accrued thereon; and provided, further, that the entire issue of new bonds sold or exchanged, as above provided, shall not exceed in all ten millions of dollars.

Sec. 4. Be it further enacted, etc., That should any obligation of the City of New Orleans be deemed fraudulent or invalid, by any member of the Board of Liquidation, the same shall not be purchased, exchanged or retired until the holder of the same shall have applied to the proper Court for relief, when, if final judgment be in his favor, it shall be deemed to be a valid obligation of the City; and should any member of the board of liquidation knowingly audit, fund, purchase,

or retire, for value, any illegal obligation of the City of New Orleans, or shall use any of the bonds herein authorized, or the proceeds thereof, or any of the City assets or property in the hands of the board, by virtue of this act, for purposes other than those contemplated in this act, he shall, on conviction thereof, be punished by fine of not less than one thousand dollars and imprisonment at hard labor for not less than one year.

Sec. 5. Be it further enacted, etc., That it shall be the duty of the City authorities, as soon as possible after the organization of the board of liquidation of the city debt, to turn over and transfer to the said board all the property of the City of New Orleans, both real and personal, not dedicated to public use, and the board of liquidation shall be and is hereby empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agent of the board at credit of "city debt fund."

Sec. 6. Be it further enacted, etc., That nothing in this act shall be construed as affecting, or in any manner impairing, the Act 31 of 1876, commonly known as the "Premium Bond Act," but it will be the duty of the city authorities to turn over and transfer to the board of liquidation of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium bond act; and it shall be the duty of the board of liquidation to apportion the proceeds of said tax, and apply the same *pro rata* and in the proportion which each form of bonded debt shall bear to the entire amount of the city's debt; and such portions of the said proceeds of tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest on the bonds created under this act.

Sec. 7. Be it further enacted, etc., That it is hereby made a felony punishable, on conviction, by fine not exceeding five hundred dollars and imprisonment at hard labor not exceeding ten years, for the fiscal agent or any member of the board of liquidation of the city debt to

divert or misappropriate any portion of the debt and interest fund herein created from its legitimate channel, as provided.

Sec. 8. Be it further enacted, etc., That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board of liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the City of New Orleans heretofore created at the rate not exceeding fifty cents per dollar, or, at the discretion of the board, for the retirement of the bonds created under this act at a price not exceeding par; and the bonds or obligations purchased, exchanged or retired, shall be cancelled and destroyed by the said board of liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence of such withesses as may desire to attend. A *proces verbal* of the same, giving the amounts, numbers, dates, and other particulars, for the identification of the obligations destroyed, shall be made out and sworn to by a majority of the board of liquidation, and published within ten days of such destruction in the official journal of the City of New Orleans.

Sec. 9. Be it further enacted, etc., That the board of liquidation is required and empowered to open, keep, and regulate a special book of registry of bonds of the consolidated bonds series of 1880, as follows, to-wit.: Any holder or owner of any of the former or old bonds of the City, issued previous to the passage of this act, upon surrendering the same for cancelment, according to the provisions of this act, shall be entitled to have the amount and number of bonds due him registered in said book, in such manner and form as the board of liquidation shall determine and prescribe, whereupon, instead of giving to said party a new bond, as contemplated by the preceding sections of this act, the Board of Liquidation shall grant to each party a certificate of registry, in such form as said Board of Liquidation may determine and prescribe, and said certificate to be transferable, in person or by proxy,

on the records of the books of the Board of Liquidation, and the semi-annual interest on the amount of said certificates, instead of being represented by interest coupons, shall be payable to such party or his order in such form and manner as said Board of Liquidation may determine and prescribe; and the City of New Orleans shall cause a sufficient number of blank certificates of registry to be printed or engraved in the form and manner prescribed, and shall deliver said blanks to the Board of Liquidation, to be used agreeably to this section.

Sec. 10. Be it further enacted, etc., That it shall be the duty of the Council of New Orleans to provide a proper office for the Board of Liquidation of the city debt; but the expense of engraving, printing and issuing the bonds created under this act, and all the necessary clerical and office expenses, shall be paid out of the funds appropriated and belonging to the payment of interest and principal of the said bonds; provided, that no member of the Board of Liquidation shall receive any salary or emolument of any kind for his services therein.

Sec. 11. Be it further enacted, etc., That the City Council be and is hereby required to levy an annual tax, calculated upon the assessment of the preceding year, less 20 per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of this act, and any tax levied shall continue in force until superseded by a new levy for the same purpose.

Section 12. Be it further enacted, etc., That all parts of all laws in conflict with this act, be and the same are hereby repealed.

(Signed) R. N. Ogden,
Speaker of the House of Representatives.
S. D. McEnery,
Lieutenant Governor and President of the Senate.

Approved April 10, 1880.

Louis A. Wiltz,
Governor of the State of Louisiana.

A true copy:
Will A. Strong, Secretary of State.